2193.

SUPREME COURT OF THE UNITED STATES.

No. 159.

EDWARD B. ST. JOHN, CLAIMANT OF THE STEAMBOAT NEPTUNE, APPELLANT,

vs.

ZEBULON A. PAINE, SARAH M. WOOD, JOHN BUCKNAM, ANDREW BRADFORD, & AUGUSTUS NORTON, LIBELLANTS.

APPEAL FROM THE CIRCUIT COURT, UNITED STATES, FOR THE SOUTHERN DISTRICT OF NEW YORK.

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SUPREME COURT OF THE UNITED STATES.

THE STEAMBOAT NEPTUNE, her tackle, &c., Edward B. St. John, claimant and appellant,
vs.
ZEBULON A. PAINE, Sarah M. Wood, John Bucknam, Andrew Bradford, and Augustus Norton, libellants.
} In admiralty.

To the honorable the Supreme Court of the United States:

The petition and appeal of the above named appellant sheweth that, on or about the twenty-eighth day of July, one thousand eight hundred and forty-six, the above named libellants, Zebulon A. Paine, Sarah Norwood, John Bucknam, Andrew Bradford, Norton, filed their libel jointly in the district court of the United States, for the southern district of New York, against the Steamboat Neptune, her tackle, apparel, and furniture, and all persons intervening for their interest in the same, in a cause of collision, civil and maritime, in which said libel was in substance alleged, among other things, that the Steamboat Neptune came into collision with the schooner Iole, of which the said libellants, Zebulon A. Paine and Sarah Norwood, were owners, through the negligent conduct of the persons in charge of the said steamboat in the manner in which the same is set forth in said libel; and by the collision aforesaid, and the consequent sinking of the said schooner with her cargo, belonging in part to the said libellant, Zebulon A. Paine, and in part to the libellant Andrew Bradford, and with the personal effects of the libellant Augustus Norton, who was a passenger on board of said schooner, the libellants, Zebulon A. Paine and Sarah Norwood, have sustained damage by the loss of the said vessel to the amount of three thousand dollars; the libellant Zebulon A. Paine, by the loss of his part of the said cargo, to the amount of five hundred and fifty dollars; the libellant John Bucknam, by the loss of his part of said cargo, to the amount of one hundred and seventeen dollars; the libellant Andrew Bradford, the loss of his part of said cargo specified in said libel, and the libellant Augustus Norton, by the loss of his personal property and effects specified in said libel; and praying, among other things, that the said district court would be pleased to pronounce for the damages aforesaid, and to decree such other relief to the libellants as should to law and justice appertain; also to condemn the said steamboat, her tackle, apparel, and furniture, and all persons intervening for their interest therein, in costs and expenses, as by said libel will appear; to which for the contents thereof this appellant asks leave to refer for greater certainty.

That process was issued against said steamboat, and the said steamboat attached; and thereupon, on or about the 24th day of September, 1846, Edward B. St. John, the claimant aforesaid, having excused the necessary stipulations for costs and value, did file his claim and answer in said district court to the said libel, alleging and setting forth, among other things in substance, that the said collision arose through the fault and insufficiency of the persons in charge of the said schooner, without any fault of the persons in charge of the said steamboat, and insisting that the said steamboat was not liable for the damage alleged by the libellants to have been sustained by them, and praying that the said district court would be pleased to pronounce against the said libel, and to condemn the libellants in costs, and otherwise right and justice to administer in the premises, as will more fully appear in reference to said answer, to which for the contents thereof the appellant asks leave to refer.

That a replication was filed to said answer, and the said cause thereafter came on to be tried and heard before the honorable Samuel R. Betts, judge of the said district court, on or about the sixth and eighth days of February, A. D. 1847, upon the allegations, testimony, and proofs advanced by the respective parties, and the said judge being advised thereon, on or about the 27th day of February, A. D. 1847, made a decretal order in substance, that the libellants recover in the said action against the Steamboat Neptune, her tackle, &c., their damages sustained by occasion of the collision aforesaid, and that the said steamboat be condemned therefor with costs to be taxed, and that it be referred to a commissioner of the said court, to ascertain and report the amount of the damages sustained by the libellants by means of the premises, as by reference to said decretal order may more fully appear; under which decretal order there was a reference had to George W. Morton, esq., commissioner as aforesaid, who reported that the damages sustained by the libellants, exclusive of interest, amounted to the sum of three thousand five hundred and forty-nine dollars and ninety-two cents; which sum was made up of the following items:

	The value
of the vessel at the time she was lost - - -	$2,500 00
75 barrels of codfish, at $3 per barrel - - -	225 00
200,000 laths at 1 50 per 1,000 - - - -	300 00
6,625 pickets, at 6 25 per 1,000 - - -	41 40
35 tons plaster, at 2 25 per ton - - - -	78 75
30 empty beer barrels, at $2 each - - -	60 00
2 beer barrels, partly full, at $2 each - - -	4 00
Value of the stores on board - - - -	33 60
Freight on 78 barrels codfish, at 2 per barrel - -	18 75
Freight on 200,000 laths, at 40 per 1,000 - -	80 00
" " 6,635 pickets, at $2 per 1,000 - -	13 27
" " 35 tons plaster, at 2 50 - -	52 50
" " 32 beer barrels, at 25 - - -	8 00
	$3,414 67

Articles on board belonging to Augustus Norton, estimating the quadrant at $16 - - - - -	$123 00
Cash in his trunk - - - - - -	10 00
	$3,547 67

That afterwards, on the fourth day of May, A. D. 1847, a final decree was pronounced by said district court, by which it was, among other things, ordered, adjudged, and decreed, by said court, that the report of the said commissioner be in all things confirmed, and that the libellants aforesaid recover in this action against the said Steamboat Neptune, her tackle, &c., the amount reported, together with the interest thereon from the 27th day of February last, amounting in the whole to the sum of three thousand five hundred and ninety-three dollars and twenty-four cents, together with the costs of the said libellants, to be taxed; and that the said Steamboat Neptune, her tackle, &c., be condemned therefor, as will more fully appear in reference to said decree. From which decrees or orders of the said district court, viz., from the decree or order pronounced on or about the 27th day of February, A. D. 1847, and from the decree or order pronounced by said court on the 4th day of May, A. D. 1847, this appellant appealed to the circuit court of the United States, for the southern district of New York, and to which said court, pursuant to said appeal, the said decree with the documents and proceedings in said district court, were duly sent, and the said circuit [court] thereupon proceeded to hear the said cause on said appeal and upon the pleadings and proofs in said cause; and afterwards, on the eighth day of November, A. D. 1847, ordered, adjudged, and decreed, that the decree of the said district court therein be in all things affirmed, with interest on the amount of the said decree from the date thereof, and the costs of the said circuit court to be taxed; and that the stipulators for costs and value pay unto the said district court, and the obligors in the bond given on the appeal to said circuit court, pay into said circuit court the amount of their respective obligations; and that the clerk distribute the same in satisfaction of said decree, as will more fully appear on reference to said decree.

And this appellant is advised and insists, that the said decree of the said circuit court is erroneous, inasmuch as the libellants in the said district court were not entitled to recover any damages in the premises, and the said decrees or orders of the said district court were for that reason erroneous, and should have been reversed by the said circuit court.

And this appellant, for these and other reasons, appeals from the whole of the said decretal order of the said circuit court, pronounced on or about the eighth day of November, 1847, to the next Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia. And he prays that the said decree, with the documents and proceedings in said cause, may be sent to the said Supreme Court, to be held as aforesaid, and that the said Supreme Court will

proceed to hear the said cause. And this appellant further prays that the said decree, and every part thereof, may be reversed and annulled and held for nought, or such other decree thereupon made, as to the said Supreme Court shall seem just; and that the said libellants be condemned to pay to this appellant his costs and damages in the premises, and otherwise as to the court shall seem just; and this appellant will ever pray, &c.

WOODRUFF & GOODMAN,
Proctors, and of counsel for applts.

By the honorable Samuel R. Betts, one of the judges of the circuit court of the United States, for the southern district of New York, to Zebulon R. Paine, Sarah Norwood, John Bucknam, Andrew Bradford, and Augustus Norton:

Whereas the Steamboat Neptune, her tackle, &c., Edward B. St. John, claimant and appellant, has filed his appeal to the Supreme Court of the United States, from the decretal order made by the circuit court aforesaid, on the eighth day of November, 1847, affirming the decree of the district court for said district, theretofore made in the cause wherein the above named Zebulon R. Paine, Sarah Norwood, John Bucknam, Andrew Bradford, and Augustus Norton, were libellants, and the said Steamboat Neptune, her tackle, &c., defendants, and the said E. B. St. John, claimant; and which decree of the said circuit [court,] the said claimant and appellants insists is erroneous.

And whereas, for the correction of the error in giving and pronouncing said decree in due manner, the said appeal has been filed, returnable at the next stated term of the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the 4th day of December, one thousand eight hundred and forty-eight; you are, therefore, hereby cited to appear before the said Supreme Court of the United States, at the place and day last aforesaid, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the twelfth day of October, in the year one thousand eight hundred and forty-seven.

SAM'L R. BETTS.

UNITED STATES OF AMERICA,
Southern district of New York, ss.

I, Alexander Gardiner, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify, that the writings annexed to this certificate [L. S.] are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this twenty-fourth day of January, in the year of our Lord one thousand eight hundred and forty-eight, and of the independence of the said United States the seventy-second.

ALEX'R GARDINER, *Clerk.*

UNITED STATES OF AMERICA,
Southern district of New York, ss.

I, James W. Metcalf, clerk of the district court of the United States of America, for the southern district of New York, do hereby [L. S.] certify, that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, this twenty-first day of May, in the year of our Lord one thousand eight hundred and forty-seven, and of the independence of the said United States the seventy-first.

(Signed) J. W. METCALF, *Clerk.*

At a stated term of the district court of the United States of America, for the southern district of New York, held at the City Hall, in the city of New York, on Tuesday, the twenty-eighth day of July, in the year of our Lord one thousand eight hundred and forty-six.

Present, the honorable Samuel R. Betts, district judge.

ZEBULON A. PAINE et al., }
vs.
THE STEAMBOAT NEPTUNE. }

July 28th, 1846.

On filing the allocature of the district judge, and on motion of E. H. Owen, proctor for the libellant, it is ordered that the libel be filed on the attestation of the proctor for the libellants.

The libellants file their libel in the words and figures following:

UNITED STATES OF AMERICA,
Southern district of New York.

To the honorable Samuel R. Betts, judge of the district court of the United States, for the southern district of New York.

The libel and complaint of Zebulon A. Paine, of Eastport, in the State of Maine, owner of one-half part of the schooner Iole, and owner of part of the cargo lately shipped on board thereof; Sarah Norwood, of Eastport, in the State of Maine, aforesaid, owner of the other half part of the said schooner; John Bucknam, owner of part of the cargo lately shipped on board thereof; Andrew Bradford, owner of part of the cargo also lately shipped on board thereof; Joseph Sumner, master of the said schooner; James McCollan, mate thereof; Ambrose Tucker, James Woorster, seamen; and Henry Cuff, cook, all of said schooner; and Augustus Norton, of Eastport, a passenger on board of the said schooner, against the Steamboat Neptune, all parties intervening for their interest in the same, in a cause of civil and maritime jurisdiction.

And thereupon the libellants allege and propound respectively upon and according to their respective best knowledge, information, and belief, as follows:

First. That the said schooner Iole, belonging and owned in Eastport, aforesaid, whereof the said Joseph Sumner was master, on or about the seventh day of July, one thousand eight hundred and forty-six, set sail and departed from the port of Eastport, in the State of Maine, aforesaid, with the said Joseph Sumner as master, having on board of said schooner a cargo consisting of laths, pickets, plaster, fish in barrels, thirty empty barrels, and two barrels of beer, and two packages of money, bound for the port of New York; and that the said schooner was then tight, staunch, and strong, and well manned, tackelled, apparalled and appointed, and was, in every respect, fit for the voyage she so undertook.

Second That in the evening of the fourteenth day of July, aforesaid, the said schooner, with three passengers, and with the said cargo on board, had successfully proceeded in and upon her said voyage, past and about one mile to the south of the light-boat, stationed off the middle ground, a shoal, nearly opposite to Stratfort Point, and that the said schooner passed the light-boat, being about one mile to the southward thereof.

That the said schooner was then steering about a west course, the wind being nearly from the north; that the night was clear, and the said vessel could be easily discerned at a considerable distance; that whilst sailing upon her course, about west, with a fresh wind, going at from six to eight knots per hour, and a short time after the said schooner had passed the said light boat, and between the hours of nine and ten o'clock at night, on the high seas, and within the admiralty and maritime jurisdiction of this court, she was negligently run against and into by the said Steamboat Neptune, which steamboat was then and there proceeding down the Sound from the city of New York; and the said steamboat then and there run and struck against the hull of the said schooner, between the fore and main rigging, on her larboard side, with such great force and violence as to break and tear open the hull of the said schooner, and cut her nearly in two, so that she filled and sunk almost immediately; and the said vessel and her cargo, and the clothes; money, and personal effects, of the crew and passengers, were totally lost; and two of the passengers, viz., a female, named Murphy, and her child, were drowned.

Third. That the crew of said schooner and one of the passengers, viz., the libellant, Augustus Norton, saved their lives by jumping from the said schooner on to the deck of the said steamboat; that they made inquiries for the captain of the said steamboat, but could find no captain on board; that they asked those on board of said steamboat to despatch a boat with assistance, to endeavor to save the lives of the woman and child aforesaid; but that no assistance being offered or given, two of the crew of the said schooner, with two of the passengers of the steamboat, took the small boat of the said steamboat, and went in search of the said female and child, but that their efforts were unavailing, the said schooner having sunk, and the said female and child having disappeared.

Fourth. That the said steamboat was at the time aforesaid carelessly,

improperly, and unskilfully navigated, and that the loss of the said schooner with the cargo on board thereof, and the clothes, money, and effects of the crew and passengers, and the lives of the said female and child was occasioned solely by the fault, carelessness, and unskilful management of the said steamboat. That the crew and those having the control and management of the said steamboat, as your libellants are informed and believe, were inexperienced in the command of the said steamboat, and were incompetent, unskilful, and insufficient, or else were careless and negligent, and by their want of skill or carelessness and negligence occasioned the said disaster, without the fault of the said schooner and her crew. That Long Island Sound, where the disaster occurred, is very wide, and there was ample room for the said steamboat to have passed and avoided the said schooner without any difficulty whatever.

Fifth. That the said schooner or vessel, called the Iole, her tackle, apparel, and furniture, at the time of the said collision, was of the value of three thousand dollars or thereabouts, and was owned and possessed as follows, that is to say, the libellant Zebulon A. Paine was the owner of one equal half part thereof, and the libellant Sarah Norwood was the owner of the other half part thereof.

Sixth. That the libellant Zebulon A. Paine was at the time of the said collison the owner of two hundred thousand lathes, 4900 pickets, and 1725 S pickets, thirty-five tons of plaster, and thirty-nine barrels of fish, shipped by him on board of the said schooner upon the said voyage, which were of the value of five hundred and fifty dollars, or thereabouts, and which cargo so shipped by him was totally lost by the said collision.

Seventh. That the libellant John Bucknam was at the time of the said collision the owner of thirty-six barrels pickled fish, which he had shipped at Eastport aforesaid, on board of the said schooner, and which was totally lost by the said collision, and which last mentioned cargo was of the value of one hundred and seventeen dollars or thereabouts.

Eighth. That the libellant Andrew Bradford was at the time of the said collision owner of thirty empty beer barrels, and two barrels containing beer, which he had shipped on board of the said schooner at Eastport aforesaid, to be carried to New York, and which last mentioned cargo was totally lost by the said collision.

Ninth. That the libellants Zebulon A. Paine and Sarah Norwood have also lost, in consequence of the said collision, the freight and passage money which the said schooner would have earned upon the delivery of said cargo in New York, and have been deprived of the use and employment of the said schooner, and have been interrupted in their business and mercantile pursuits to their great loss and damage.

Tenth. That the libellant Joseph Sumner saith, that he was the owner of, and had on board of the said schooner at the time of the collision aforesaid, and totally lost, the articles, property, effects, enumerated and specified in schedule hereto annexed, marked A, which he prays may

be taken as a part thereof; which articles, property, and effects are truly valued in the said schedule.

That the libellant James McCollar said that he had on board, and was the owner of, at the time of the said collision, and totally lost, the articles, property, and effects specified in schedule B, hereto annexed, and which he prays may be taken as a part of this libel, and that the value of said several articles is truly set forth therein. That the libellant Ambrose Tucker saith, that he was the owner of, and had on board of the said schooner at the time aforesaid, and totally lost, the property and effects specified and being of the value stated in schedule C, hereto annexed, and which he prays may be taken as a part of this libel. That the libellant James Woorster saith, that he was at the time of the said collision the owner of, and had on board the said schooner, and totally lost by the said collision, the property and effects specified and being of the value stated in schedule hereto annexed, marked D, and which he prays may be taken as a part of this libel. That the libellant Henry Cuff saith, that he was the owner of, and had on board of the said schooner at the time of the collision aforesaid and totally lost, the articles mentioned in the schedule hereto annexed, marked E, being of the value therein stated, and which schedule he prays may be taken as a part of this libel. That the libellants Joseph Sumner, James McCollar, Ambrose Tucker, James Woorster, and Henry Cuff, were sailing in and on board of the said schooner, on monthly wages, and that they have been thrown out of employ and put to much expenses and loss.

That the libellant Augustus Norton saith, that he was a passenger on board of, said schooner, and that he was the owner of, and had on board at the time of the said collision, the property and effects specified in schedule F, hereto annexed, and which he prays may be taken as a part of this libel; and that the said property and effects are truly valued in the said schedule, and they were wholly lost to him, and that in consequence he is now destitute, having saved nothing but one shirt, and that he has suffered great inconvenience, anxiety, and delay by reason of the said loss.

Eleventh. That after information of the loss of the said schooner and her cargo, as aforesaid, was received in New York, the libellants' agents in said city caused application to be made to George Law, who, as they are informed and believe, was at the time of the said collision, the owner of the said steamboat, to pay the damages which the steamboat had improperly, carelessly, and negligently occasioned as aforesaid, but that he refused to comply with such request.

Twelfth. That all and singular the matters aforesaid are true and within the admiralty and maritime jurisdiction of this honorable court, and that the said vessel, her tackle, apparel, &c., is within the district, and in verification thereof, if denied, the libellants crave leave to refer to the depositions and other proofs to be by them exhibited in this cause.

Wherefore the libellants pray, that process in due form of law ac-

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cording to the course of and practice of courts of admiralty and of this honorable court, in cause of admiralty and maritime jurisdiction, may issue against the said Steamboat Neptune, her tackle, apparel, and furniture, and that all persons having or pretending to have any right, title, or interest therein, may be cited to appear and answer upon oath all and singular the premises. And that this honorable court will be pleased to pronounce for the damages aforesaid, and to decree such other relief to the libellants as shall to law and justice appertain.

Also to condemn the said steamboat, her tackle, apparel, and furniture, and all persons intervening for their interest therein in costs and expenses.

JOSEPH SUMNER,
E. H. OWEN.

E. H. OWEN, *Proctor.*
F. B. CUTTING, *Advocate.*

SOUTHERN DISTICT OF NEW YORK, *ss.*

Joseph Sumner being by me duly sworn, doth depose and say, that he has heard read the foregoing libel and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be upon his information and belief, and as to those matters he believes it to be true.

ALEX. GARDINER, *U. S. Com'r.*

17 July, 1846.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Edward H. Owen, of said district, being duly sworn says, that he is proctor for the above named libellants; that the libellants, as he is informed and believes, reside in the State of Maine, and more than one hundred miles from the city of New York, and are not now in the said city; that he has read the foregoing libel by him subscribed, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated to be on the information and belief of the respective libellants, and that as to these matters he believes the same to be true.

E. H. OWEN.

Sworn to this 28th day of July, 1846, before me.

GEO. W. MORTON, *U. S. Com'r.*

Schedule A.

Capt. Joseph Sumner:

1 quadrant,		$12 00
1 watch, silver,		20 00
1 beaver cloth over-coat,		13 00
1 navigation book, (Pittuny,)		4 00
2 thin coats,	1 50 ea.	3 00
1 pair pantaloons,	3 00	3 00
1 pair boots,	3 00	3 00
1 pair new shoes,	1 00	1 00

6 shirts, 1 25	- - - -	$7 25
2 vests, - -	- - - -	4 50
1 new suit oil clothes, -	- - - -	3 00
2 pair drawers 75	- - - -	1 50
2 pair socks, 25	- - - -	50
4 shirt bosoms, 75	- - - -	3 00
3 collars 25	- - - -	75
2 silk handkerchiefs -	- - - -	1 75
1 fur hat, - -	- - - -	2 00
2 cloth caps, 50	- - - -	1 00
1 glazed cap, new 8 *s.*	- - - -	1 00
1 mattress and bedding,	- - - -	5 50
1 accordeon, - -	- - - -	2 50
1 chart, - -	- - - -	2 25
		95 00
1 silver dollar in my shirts,	- - - -	1 00
		96 00

JOSEPH SUMNER.

Schedule B.

James McCollar, mate of the schooner Iole:

1 over-coat, -	- - - -	$16 00
1 round jacket, new, -	- - - -	8 00
2 pair boots, -	- - - -	4 50
1 hat, -	- - - -	2 00
1 suit of oil clothes,	- - - -	3 00
3 shirts, -	- - - -	7 00
4 pair drawers,	- - - -	4 50
1 navigation book,	- - - -	2 00
1 coast pilot book,	- - - -	4 00
2 pantaloons, $2,	- - - -	4 00
1 trunk, -	- - - -	1 00
2 marlin spikes $1 25 palm and merle 40,	- -	1 65
1 mattress, -	- - - -	5 00
2 quilts 4 00; 2 blankets $4,	- - - -	8 00
2 pillows, $1 00,	- - - -	2 00
Cash in my trunk,	- - - -	5 00
		77 65

JAMES McCOLLAR.

Schedule C.

Ambrose Tucker, hand on board sch. Iole:

1 beaver cloth over-coat,	- - - -	$7 00
1 cloth round jacket, -	- - - -	5 00
1 pair cassimere pantaloons,	- - - -	5 00
1 pair sattinet pantaloons,	- - - -	2 00

2 vests,		$3 00
6 shirts,		6 00
2 pair drawers,		1 00
4 pair socks,		1 00
1 black silk handkerchief,		1 00
1 fur hat,		2 00
1 glazed hat, new,		75
2 pair boots, 2 50,		5 00
1 pair new pumps, 8s.		1 00
1 mattress, $5,		5 00
2 quilts, 8s.		1 00
1 pillow,		1 00
1 looking glass,		25
1 razor 4s., 1 razor strop 2s., 1 brush and box 2s.		1 00
2 knives, 6s.		75
		$49 25

AMBROSE TUCKER.

Schedule D.

James Woorster, hand on board schr. Iole:

1 beaver cloth coat,	$15 00
1 summer coat	10 00
1 vest,	2 00
1 vest,	1 50
1 pair pantaloons,	3 00
1 pair pantaloons,	3 00
1 chest,	3 00
1 cap,	1 00
1 pair new boots,	3 00
5 shirts,	3 00
1 mattress,	5 00
2 quilts, 8s.	2 00
1 pillow, 8s.	1 00
1 suit oil clothes,	3 00
1 looking glass,	50
	$57 00

JAMES WOORSTER.

Schedule E.

Henry Cuff, cook on board schr. Iole:

1 pair boots,	$4 00
1 pair shoes,	1 25
2 shirts, 8s.	2 00
1 pair pantaloons, new, 8s.	1 00
1 cap, $4	4 00
2 quilts, 8s.	2 00
1 pea coat, $4,	4 00
1 new hat, 6s.	75

1 cap, 8s.	$1 00
2 pair stockings, 4s.	1 00
1 pair socks, 2s.	25
1 razor, 4s., shaving box and brush, 2s.	75
1 pair home made pantaloons,	1 00
	$23 02

his
HENRY X CUFF.
mark

Schedule F.

NEW YORK, *July* 16*th*, 1846.

Steamer Neptune and Owners,

Dr. To Augustus Norton,

For the following articles lost on board schr. Iole:

1 new over-coat,	$18 00
1 " dress "	22 00
1 " jack "	6 00
3 pairs pants, (2 prs. new,)	17 00
3 vests,	11 00
1 hat and box,	4 50
3 caps,	5 50
8 shirts, 2 00,	16 00
6 flannels	9 00
5 pr. do. drawers,	10 00
12 stockings,	3 00
Sundries in trunk,	20 00
Trunk, new,	6 00
Package in charge,	15 00
1 quilt and blanket,	10 00
1 quadrant,	25 00
Damage to chest of clothes, books, &c.	30 00
1 pr. boots, new,	4 00
	$232 00

AUGUSTUS NORTON.

District court of the United States, for the southern district of New York, filed the 28th day of July, 1846.

Stipulation entered into pursuant to the forty-fourth rule of this court.

Whereas a libel hath been filed in this court, on the twenty-eighth day of July, 1846, by Zebulon A. Paine, Joseph Sumner, and others, libellants, against the Steamboat Neptune, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that the same

may be condemned and sold to pay the demands of the libellants, and the parties hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the libellants or their sureties, execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and are bound, in the sum of two hundred and fifty dollars, conditioned that the libellants above named shall abide by the final decree entered in the cause, and shall pay all such costs as shall be awarded against them by this court, or in case of appeal by the appellate court.

THOMAS T. STURGES,
ABNER OSBORN.

Taken and acknowledged, this 28th day of July, 1846, before me.
GEO. W. MORTON, *U. S. Com'r.*

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Thomas T. Sturges and Abner Osborn, parties to the above stipulation, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

THOMAS T. STURGES,
ABNER OSBORN.

Sworn to this 28th day of July, 1846, before me.
GEO. W. MORTON, *U. S. Com'r.*

Whereupon the motion and attachment as follows issue:

SOUTHERN DISTRICT OF NEW YORK, *ss.*

The President of the United States of America, to the marshal of the southern district of New York, greeting:

Whereas a libel hath been filed in the district court of the United States, for the southern district of New York, on the twenty-
[L. S.] eighth day of July, in the year of our Lord one thousand eight hundred and forty-six, by Zebulon A. Paine and others, libellants, against the Steamboat Neptune, her tackle, apparel, [&c.,] for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamboat or vessel, her tackle, &c., may be cited in general and special, to answer the premises, and all proceedings being had that the said steamboat or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

You are therefore hereby commanded to attach the said steamboat or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having any thing to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court,

to be held in and for the southern district of New York, on the eighteenth day of August next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this twenty-eighth day of July, in the year of our Lord one thousand eight hundred and forty-six, and of our independence the seventy-first.

J. W. METCALF, *Clerk.*

E. H. OWEN, *Proctor for libellant.*

Southern district of New York, United States district court:

ZEBULON A. PAINE and others
vs.
The STEAMBOAT NEPTUNE, her tackle.

Monition returnable August 18, 1846.

E. H. OWEN,
Proctor for libellant.

I hereby depute Henry Collins to execute the within process, dated July 28, 1846.

ELY MOORE,
U. S. Marshal.

Filed August 18, 1846.

In obedience to the within monition, I attached the Steamboat Neptune therein described, on the 28th day of July, 1846, and have given due notice to all persons claiming the same, that this court will on the 18th day of August, inst., (if the day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

ELY MOORE,
U. S. Marshal.

Dated 18th August, 1846.

UNITED STATES DISTRICT COURT,
For the southern district of New York.

ZEBULON A. PAINE, Joseph Sumner, and others,
vs.
THE STEAMBOAT NEPTUNE, her tackle, etc.

I hereby consent that the above vessel be discharged from custody on the filing stipulations for costs and value. The latter in the sum of five thousand dollars. The stipulators to justify before the commissioners, and the claimants to pay into court the costs of the clerk and marshal to the time of stipulating.

July 29, 1846.

E. H. OWEN,
Proctor for libellants.

I consent to appear for the claimants and waive publication of notice, and answer the libel on file on or before the 18th August.

July 29, 1846. L. B. WOODRUFF,
Proctor for claimants.

July 29, 1846. On filing consent to stipulate and waive publication of notice, and the terms being complied with, on motion of the proctors for the claimants in the above suits, it is ordered, that the vessel be discharged from custody.

DISTRICT COURT OF THE UNITED STATES,
For the southern district of New York.

Filed the 29th day of July, 1846.

Stipulation entered into pursuant to the forty-fourth rule of this court.

Whereas a libel hath been filed in this court, on the 28th day of July, 1846, by Zebulon A. Paine, Joseph Sumner, and others, libellants, against the Steamboat Neptune, her tackle, &c., for the reasons and cause in the said libel mentioned, and praying that the same may be condemned and sold to pay the demands of the libellants. And the parties hereto hereby consenting, that in case of default or contumacy on the part of the claimants, or their surety, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands.

And whereas, also, a claim is about to be filed in said cause by E. B. St. John on behalf of the owners:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and are, bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all such costs as shall be awarded against them by this court, or in case of appeal by the appellate court.

A. P. ST. JOHN,
GEORGE LAW.

Taken and acknowledged this 29th day of July, 1846, before me.
GEO. W. MORTON, *U. S. Comm'r.*

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Abraham P. St. John and George Law, parties to the above stipulation, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

A. P. ST. JOHN,
GEORGE LAW.

Sworn to this 29th day of July, 1846, before me.
GEO. W. MORTON, *U. S. Comm'r.*

DISTRICT COURT OF THE UNITED STATES,
For the southern district of New York.

In admiralty.—Filed the 29th day of July, 1846.

Stipulation entered into pursuant to the rule of this court.

A libel having been filed on the twenty-eighth day of July, 1846, by Zebulon A. Paine and others, against the Steamboat Neptune, her tackle, &c., for the reasons and causes in the said libel mentioned; and the said steamboat, her tackle, &c., being in custody of the marshal, under the process issued in pursuance of the prayer of said libel, and by a consent filed in said cause, it has been agreed to discharge the said vessel from custody, on stipulations for costs and value, the latter in the sum of five thousand dollars, as appears from said consent now on file in said court. And the parties hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the claimants, or their sureties, execution for the above amount may issue against their goods, chattels, and lands:

Now, therefore, the condition of this stipulation is such, that if the stipulators undersigned, shall at any time, upon the interlocutory order or decree of the said district court, or of any appellate court to which the above named suit may proceed, and upon notice of such order or decree, to L. B. Woodruff, esquire, proctor for the claimant of said steamboat, bring into said district court the above named sum of five thousand dollars, then this stipulation to be void, otherwise to remain in full force and virtue.

A. P. ST. JOHN,
GEORGE LAW.

Taken and acknowledged, this 29th day of July, 1846, before me.
GEO. W. MORTON, *U. S. Comm'r.*

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Alanson P. St. John and George Law, parties to the above stipulation, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of ten thousand dollars, over and above all his just debts and liabities.

A. P. ST. JOHN,
GEORGE LAW.

Sworn to this 29th day of July, 1846, before me.
GEO. W. MORTON, *U. S. Comm'r.*

ZEBULON PAINE et al.
vs.
THE STEAMBOAT NEPTUNE, her tackle, &c. } August 11, 1846.

On motion of E. H. Owen, proctor for the libellants, the proctor for the claimant assenting thereto:

It is ordered, that the claimant execute a stipulation in the sum of two thousand dollars for value, in addition to the stipulation heretofore given in the above cause.

DISTRICT COURT OF THE UNITED STATES,
For the southern district of New York.

In admiralty.—Filed the 16th day of September, 1846.

Stipulation entered into pursuant to the rule of this court.

A libel having been filed on the 28th day of July, 1846, by Zebulon A. Paine and others, against the Steamboat Neptune, for the reasons and causes in the said libel mentioned; and the said steamboat having been discharged from custody, on stipulations for costs and value, after being in custody of the marshal, under the process issued in pursuance of the prayer of said libel, and the claimants consenting to give a further stipulation for value on the sum of two thousand dollars, in addition to the stipulation for five thousand dollars heretofore given, as appears from said consent now on file in said court; and the parties hereto hereby consenting and agreeing that, in case of default or contumacy on the part of the claimants, or their sureties, execution for the above amount may issue against their goods, chattels, and lands:

Now, therefore, the condition of this stipulation is such, that if the stipulators undersigned shall at any time, upon the interlocutory order or decree of the said district court, or of any appellate court to which the above named suit may proceed, and upon notice of such order or decree, to L. B. Woodruff, esquire, proctor for the claimants of said Steamboat Neptune, bring into said district court the above named sum of two thousand dollars in addition, then this stipulation to be void, otherwise to remain in full force and virtue.

GEORGE LAW,
A. P. ST. JOHN.

Taken and acknowledged, this 16th day of September, 1846, before me.

GEO. W. MORTON, *U. S. Comm'r.*

SOUTHERN DISTRICT OF NEW YORK, *ss.*

George Law and Alanson P. St. John, parties to the above stipulation, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of four thousand dollars, over and above all his just debts and liabilities.

GEORGE LAW,
A. P. ST. JOHN.

Sworn to this 16th day of September, 1846, before me.
GEO. W. MORTON, *U. S. Comm'r.*

THE STEAMBOAT NEPTUNE, her tackle, &c., ads. ZEBULON A. PAINE et al. } August 20, 1846.

I hereby consent that the owners of the said steamboat and her tackle, &c., claimants, for whom Messrs. Woodruff and Goodman

have appeared, have ten days further time to answer the libel filed herein.

E. H. OWEN,
Proctor for libellants.

New York, Aug. 18, 1846.

At a stated term of the district court of the United States of America, for the southern district of New York, held at the City Hall in the city of New York, on Wednesday, the second day of September, in the year of our Lord one thousand eight hundred and forty-six; present, the honorable Samuel R. Betts, district judge.

ZEBULON A. PAINE, Joseph Sumner, et al.,
vs.
The steamboat NEPTUNE, her tackle, &c., E. B. St. John et al., claimants.

On reading and filing an affidavit of E. H. Owen, proctor for the libellants, setting forth that the time for the claimants to interfere and file their claim and answer to the libel on file, expired on the 28th of August last, and that no claim and answer has been filed.

On motion of E. H. Owen, proctor for the libellants, it is ordered that the default of the claimants in not answering be entered, and that it be referred to one of the commissioners of this court to ascertain and compute the damages sustained by the claimants by the collision in the libel mentioned, and to report thereon to this court with all convenient speed.

UNITED STATES OF AMERICA,
Southern district of New York.

Term, 1846.

To the honorable Samuel R. Betts, judge of the district court of the United States, for the southern district of New York.

And now Edward B. St. John, of the city of New York, in the district aforesaid, intervening for his interest in the Steamboat Neptune, appears before the honorable court; and, for answer to the libel and complaint of Zebulon A. Paine, of Eastport, in the State of Maine; Sarah Norwood, of same place, and John Bucknam, Andrew Bradford, Joseph Sumner, James McCollar, Ambrose Tucker, James Wooster, Henry Cuff, Augustus Norton, against the Steamboat Neptune, and all parties intervening for their interest in the same, propounds as follows:

First. That the respondent, at the time in the said libel set forth, to wit, on the fourteenth day of July aforesaid, and before and afterwards, was the lawful owner of the said Steamboat Neptune, a vessel of 720 tons, or thereabouts, now in the service of the United States, and having sailed for Texas or Mexico.

Second. And the respondent, as to the allegations of the said libellants and each of them in the first, fifth, sixth, seventh, eighth, ninth,

and tenth articles of the said libel contained, says that he is ignorant of and not informed concerning the same and by the said libel, and cannot therefore admit or deny the same to be true, but leaves the same to be proved according to the custom and practice of this court. And the said respondent further alleges and propounds that the matters in the second, third, and fourth articles of the said libel are in great part falsely alleged, and that the truth is, as this respondent is informed and believes, as is hereinafter particularly propounded.

Third. That the said Steamboat Neptune, being in good order and well and sufficiently equipped and manned, sailed from the port of New York, in the State of New York, at five o'clock of the afternoon of the fourteenth day of July, 1846, bound for Newport and Providence, in the State of Rhode Island; and, in prosecution of her voyage, proceeded on her passage, at her regular rate, until about one mile from Stratford light boat, when, at or about 8 or 10 o'clock in the evening, a vessel was seen about one-half quarter of a mile ahead, which vessel the respondent understood to have been the schooner Iole, as is alleged in said libel.

Fourth. That, immediately on seeing the said schooner Iole, the course of the said Steamboat Neptune was changed to windward of the said schooner for the purpose of giving said schooner the course she was then running. That, when the said steamboat was about ten or twelve lengths from the said schooner, it was observed that the latter had changed her course, and was luffing up so as to cross the bows of the said steamboat. That, when first seen, said schooner was running north by south, from which she changed suddenly to about northwest. That, on seeing that said schooner had changed her course, the bell of the steamboat was immediately rung to stop her, and all efforts made to avoid the collision, but the said schooner came directly across the bows of the said steamboat, and the latter having some headway a collision could not be avoided. That the said schooner was struck about midships, and her crew at once jumped from the rigging on board the said steamboat. That the first report was, no one was left on board the schooner; the next was that a female and child was left on board, upon hearing which a small boat was immediately lowered from the Neptune, and sufficiently manned, and every other possible effort was made for the purpose of saving the persons on board of the said schooner; but that, before or about the time the boat could be lowered, the said schooner disappeared; but whether any person or persons were in her at the time she sunk, this respondent is not informed—save by the said libel [and] cannot state. That the captain of the said steamboat, and the men with him who manned the said small boat, continued to row about the place of the disappearance of the said schooner for more than half an hour; but, finding no person or persons needing their aid, they returned to the Neptune. That, at the urgent request of the said passengers on board the said steamboat, who feared she might have become leaky by the collision, the said boat returned to New York; and, on

being examined, was found to be in safe condition, only injured a little at the bows, and fully able to have continued her voyage in safety.

Fifth. That Thomas J. Davis was, at the time of the occurrence aforesaid, master and captain of said steamboat, and had been on board of her for a year or more preceding; and that Nathan Child, former captain of said boat, a pilot accustomed to conduct and manage steamboats in the harbor of New York and on the route said boat was then proceeding, and John Driver, a wheelsman familiar and experienced in the management of said boat, and who had been employed on board of her the preceding seven years, were in the pilot-house, at the wheel, at the time of the said occurrence; and that all and every of said persons were skilful and sufficient in the management of said boat, and were in no way, nor were the crew employed in said boat, inexperienced, incompetent, unskilful, insufficient, careless, or negligent, in the management of said steamboat, as is falsely alleged in the fourth article of the libel aforesaid; nor was the said steamboat at the said time carelessly, improperly, or unskilfully navigated; nor was the loss of the said schooner and cargo, and other effects in the said libel named, nor the lives of the said woman and child, if any such loss took place, occasioned by the fault, carelessness, or unskilful management of the steamboat, as is also falsely alleged in the said fourth article of the said libel aforesaid.

Sixth. That the reason why the said schooner was not seen earlier than at the distance of one quarter of a mile was, that a heavy black cloud shut her out from view, and she had no lights visible on board which could enable the captain, or pilot, or the other wheelsman, or any of the crew of the said steamboat, to discover the said schooner sooner.

Seventh. That, as soon as the said schooner was seen, the course of the said steamboat was immediately changed, according to the rule customarily in such cases, so as to give the schooner the course she was pursuing. That this threw the broadside of the Neptune to view from the schooner, so that the man at the wheel on board the schooner saw the head and stern lights of the steamboat more distinctly, and her course was plainly seen by him.

Eighth. That the wind was blowing fresh, and the luffing up of the schooner so as to cross the bows of the steamboat, when the position and course of the latter were so evident to those on board the schooner, could not have been expected by any person on board the steamboat, and were contrary to all proper and lawful rules of navigation.

Ninth. That the said captain, pilot, wheelsman, and crew of the said Steamboat Neptune, used the greatest skill and care in the management of the same on the night aforesaid, and took every possible precaution to prevent the occurrence of any accident; and that the said steamboat did not in any manner negligently run against the said schooner, as is falsely alleged in the second article of the said libel.

Tenth. That, on the occurrence of the said accident, the captain of the said steamboat, with a sufficient number of his crew, manned the

small boat and went in her, so as to afford every possible assistance to the persons or property on board the said schooner; and the allegations in the third article of the said libel, that no captain could be found on board of said steamboat, and that no assistance was offered or given to save the lives of those on board of the said schooner, are false.

Eleventh. That the accident aforesaid was occasioned by the great negligence and want of care of the officers and crew of the schooner Iole, in not providing powerful lights on deck, so that the said schooner could be discerned at a distance, and in changing the course of said schooner right across the bows of the said steamboat when the latter was in full view of the said officers and crew, and that it was not occasioned by the fault, carelessness, or unskilful management, or by any malice or evil design on the part of the said captain, pilot, or any of the crew on board the said Steamboat Neptune, as is falsely alleged in the fourth article of said libel, and that the owner of the said Steamboat Neptune is not therefore liable to pay the damages by the libellant sustained.

Twelfth. That as to the allegations in the said tenth article of said libel contained this respondent says, that some person or persons on behalf or in the name of the libellants, or one of them, informed the said Law of the occurrence and accident, and stated who was the counsel employed therein; that said Law immediately called on said counsel of libellants, and on behalf of the owner of said steamboat offered to leave the whole matter to the decision of any two disinterested persons, who might choose a third as umpire; that said counsel of libellants promised to see his clients, and acquaint said Law with their answer to said proposition; that the only reply or answer made was the sending of an officer of this court to take possession of said boat by virtue of the said libel in this cause.

Thirteenth. That all and singular the premises are true; in verification whereof, if denied, the respondents crave leave to refer to the deposition and other proofs by him exhibited in this cause.

Wherefore, the respondents pray that this honorable court would please to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise right and justice to administer in the premises.

E. B. ST. JOHN, *Respondents*.

WOODRUFF & GOODMAN, *Proctors*.

SOUTHERN DISTRICT OF NEW YORK, *ss*.

Edward B. St. John, above named, personally appeared before me, this 25th day of September, A. D. 1846, and made oath that he has read the above claim and answer subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information or belief, and as to these matters he believes them to be true.

ALEX. GARDINER, *U. S. Com'r*.

U. S. DISTRICT COURT:

The replication of Zebulon A. Paine, Sarah Norwood, John Buckman, Andrew Bradford, Joseph Sumner, James McCollar, Ambrose Tucker, James Wooster, Henry Cuff, and Augustus Norton, libellants of the Steamboat Neptune, her tackle, &c., to the claim and answer of Edward B. St. John, claimant and respondent to the said libel.

These repliants, saving and reserving to themselves now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said claim and answer, for replication thereunto say, that they will aver, maintain, and prove their libel to be true, certain, sufficient in law to be answered unto; and that the said claim and answer of the said claimant and respondent is uncertain, untrue, and insufficient to be replied unto [by] these repliants; without that, that any other matter or thing whatever in the said claim and answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true: all which matters these repliants are and will be ready to aver, maintain, and prove, as this honorable court shall direct; and humbly pray, as in and by their libel they have already prayed.

E. H. OWEN, *Proctor for libellants.*

THE STEAMBOAT NEPTUNE, Edward B. St. John, claimant, ads. ZEBULON A. PAINE et al. } October 13, 1846.

This cause being called in its order on the calendar, Mr. Cutting moves the hearing; Mr. Woodruff reads and files affidavits in opposition, and argues against the motion.

Mr. George Wood argues in support of the motion. Ordered, that the cause go off for the term on payment by the claimant of the costs of opposing the motion, and all the costs of the term.

November 9, 1846. On motion of Mr. Cutting, ordered hearing. Evidence for the libellants.

ZEBULON A. PAINE and others vs. The STEAMBOAT NEPTUNE, Edward B. St. John, claimant. } Nov. 9, 1846.

James McCollar, sworn, (objected to—point reserved,) resides at Eastport, Maine. Schooner Iole was owned by Z. A. Paine and Sarah Norwood, residing at Eastport; witness was 2d mate on board; she sailed from Eastport for N. Y. July 7, 1846, Captain Sumner, James Wooster, Abraham Tucker, Henry Cuff, Justus Norton, Mrs. Murphy and child; wit. [says] Captain J. Wooster, Tucker, and Cuff, had management of vessel; others were passengers.

Tucker and Wooster before mast; Cuff was cook; schooner was full

laden with lath, plaster, fish, and empty barrels; she was about 80 tons burthen; entered Sound six days after leaving Eastport.

Afternoon of 14th July took wind to north; had been adverse all the voyage previous; was at anchor when breeze sprung up; about 5 or 6 P. M., was at N. and E. of Stratford light-boat, and in middle of Sound.

When got under way steered up towards light-boat, and passed her about a mile to southward of her, and then laid course west down the Sound.

Discovered Neptune about an hour after passing the light-boat; she appeared steering east, or E. by N., going east; supposes two or three miles off; schooner still holding her course W.

Schooner was going 5 or 6, possibly 7 knots; witness was standing on break of the quarter, larboard side, about 4 feet aft of main rigging; Wooster was at the wheel; witness directed the course of schooner; no other persons on deck as approached steamer, others all below; this was between 9 and 10 P. M., and clear starlight night; could see land on each side of Sound; a cloud had risen, but passed off, and stars were as bright at north as south, and could see land plainer; schooner holding W. course, and saw steamer coming down, as he judged, so as to pass a mile south of schooner; saw the high light of her stem open to westward, or N. W. forward light, so that witness was certain she was to southward; came down till got on to lee bow of schooner, when he supposes she saw the schooner, and then altered her course northwardly to cross bow of schooner, and so as to be at windward; thinks she was ½ a mile off to southward when she made that change of course.

Witness found she was coming into them and hailed her; got no answer; steamer kept her speed till within, he should judge, 20 feet of the schooner; the bell then rang to stop her, and in a second or so she struck schooner between fore and main rigging; her stem came to windward part of galley, about ⅔ across deck of schooner; witness found schooner was filling fast, and jumped aboard steamboat; inquired for captain of steamer, was told none was on board; asked also for mate, was told none [was] on board, but [there] was a man acting as mate that night; name not mentioned; witness asked for a boat to go and save the woman and child; got no answer to that, and witness started himself to find a boat; a passenger showed way on deck, but went wrong, into ladies' cabin, and when witness got on deck found boat lowering down, when witness and Wooster jumped in, and found two men in her, who said they did not belong to steamer, were passengers; witness took command of boat, and ordered them to pull up; obeyed him; pulled up to where deck load of vessel was floating, and one of [the] men in bow said it was no use, and should turn back; witness refused, and said he thought he heard the cry of the woman; pulled up and found it was jaws of main gaff squeaking against mast which he heard; schooner had sunk all but head of her mainmast; nothing out but gaff topsail.

All from schooner, except woman and child, got on board the steamboat; they were drowned.

Schooner sunk instantly after collision; she rolled over on bow of steamboat and then went down; nothing was saved from her at [that] time; a chest of sea clothes was picked up afterwards, (Norton's.)

The schooner did not change her course at all to the time of the collision; sound 14 or 15 miles wide there, and plenty of sea room north or south of the schooner; believes deck load of laths was afterwards picked up; schooner was staunch, sound, and well found in equipments at [the] time.

Cross examined.

Witness is 30 years old; been at sea since 10 years old, from cook to captain; been in this schooner several times, and once as master; went as mate this trip; was standing against rail of his vessel, larboard side, when he first saw the Neptune; thinks it was about 9 o'clock when he first saw her; schooner was about ¼ a mile west of light-boat, and [the] collision was about a mile from light-boat.

Supposes he first saw Neptune 5 or 6 miles off, near as could judge in the night.

Kept the compass in binnacle of schooner, within five feet of where he stood; man at helm was about 8 feet from witness; saw two lights on Neptune; saw the light-boat as soon as she lit up, say 6, p. m., atmosphere then clear; Captain S. was standing in gangway when vessel struck; witness had called him 5 minutes before, should think; he was in his berth, and had been below about an hour; did not see Neptune before he went below; has not said so; course up the Sound from where schooner was would be W. by S. ½ S., and nothing in way to obstruct the view to Sands' point; run for that point from light-boat; should think it 30 miles.

The compass was in view of the man at [the] helm. Witness should have known if schooner deviated from her course; and she did not, up to time of collision. Has frequently made passages through the Sound. Sail vessels do not carry lights when night is as clear as it was that night. Norton, the passenger, was in his berth at the time of the collision; called captain and all hands, because he saw steamer was coming into them. Captain came first; stood in gangway, he supposes, 5 minutes; passenger did not get out of his berth till knocked out. He heard all said on deck, but thought there was no danger. Other hands did not get out till collision.

Cross examined.

All went up on Neptune's bow. Paine and Sarah Norwood employed witness, and owned vessel. Witness knows that Z. A. Paine and William Norwood built schooner; Mr. N. was husband of Sarah, and was lost at sea 2 years ago. Witness has been in their employ a long time. Mr. Paine had control of the schooner, and always hired and paid witness. Witness never transacted business with Mrs. Norwood. Mrs. Norwood has had benefit of half schooner's earnings since witness

has been on her the last time; knows that by seeing Mr. Paine settle the books with captain of vessel.

Witness was in schooner about 11 months before the loss. During that time Mrs. Norwood was accounted to as owner of ¼.

James Wooster, (sworn.) Same objection as to last witness. Witness was seaman on board schooner; shipped at Eastport; been in her about 3 years. She was, during that time, engaged as coaster to New York; that was her regular route; always came through the Sound.

Mr. Paine and Mrs. Norwood owned her in July last. Anchored to east of light boat. When wind sprung up, got under way, and captain steered her. Supposes it was between 5 and 6, p. m. Witness came to the wheel at 8, p. m.; relieved the captain at wheel. Witness continued there till collision. When witness took it, course was west. Schooner was then southward of light boat, but did not observe where she was. Night was clear; could see both shores. Mate said he saw steamer not long after witness came to the wheel.

Witness continued to hold W. course, and was that when steamer struck; did not vary from it. Witness had compass plainly in sight, and steered by it. When witness first saw steamer she was running about E. by N.; saw her as she approached schooner; came down on lee of schooner, on larboard side, and thought she was going by on that side; and she would, if she had kept her course. She then changed her course to N. or N.W., so as to cross schooner's bows, when ½ a mile or so off. She kept that course till she struck; heard mate call all hands about same time steamer changed her course. Witness did not keep away any. Steamer rang bell to stop when 20 feet off, as he thought; does not think her headway was checked any to speak of, from manner she cut into schooner. Blow knocked witness down. He got up, and climbed up on bows of steamer. When got on board, heard McCollar ask for captain and mate; answer was given that [there] were none on board. He asked for a boat; heard no answer to that. Witness went in boat with mate. When [they] got to her, some persons were lowering her away. There were two men in who said they were passengers. Went to look for woman and child; did not find her; schooner was sunk; head of her mainmast was out of water; no other boat put out. Is now 20 years old; been on water since 10 years old; been in fishing vessels; held his trick at the wheel in them; been through the Sound 10 trips in a year in this schooner, and took his turn at the wheel in each. Is well acquainted with management of her helm.

Cross examined.

Should think it 8 or 10 miles across the Sound where collision took place. Witness saw steamer 10 or 15 minutes after the mate said he saw her, and thinks then she was three or four miles off. Saw her off his larboard bows. Does not know that any thing was done to save the woman and child after the alarm, or after the collision; does not know of any thing done by steamboat to save persons or property; did not see any of them trying. Small boat went off but once. Can't tell

how long steamer stopped, but should think nearly ½ an hour after collision. Schooner had no lights up; can't tell how fast was going; 5 to 7 knot breeze was fresh from N.

Norton had nothing on but his shirt when he got on steamer; thinks all on board had barely time to save themselves; found schooner was sinking as soon as he got up. She was cut nearly ⅔ through. When witness got up, steamer was backing off, and schooner was rolling over towards her and sinking.

Tuesday, November 10, 1846.

This cause being still on trial, and the presence of the district judge being required in the circuit court, the further hearing is adjourned to the next term of the court.

Friday, December 4th, 1846.

George W. Morton, U. S. commissioner, brings into court the deposition of Thomas J. Davis, taken de bene esse before him. On motion of Mr. Woodruff, proctor for the libellant, it is ordered that it be filed.

The cause being still on hearing, Mr. Cutting argues the point of law as to the admissibility of the testimony of the co-libellants as witnesses.

Mr. Wood argues in reply.

Mr. Cutting concludes the argument. Cur. adv. vult.

Monday, December 7, 1846.

This cause being still on trial, Mr. Cutting moves that the libel be amended by striking therefrom the names of Joseph Sumner, master; Francis McCollar, mate; Andrew Tucker and James Wooster, seamen, and Henry Cuff, cook, wherever the same shall occur as parties to the suit.

Mr. Wood argues against the motion.

Ordered, that the libel be amended by striking out the names of the said libellants. The deposition taken on the part of the claimant not to be affected by the amendment.

Defence —Capt. Nathan Childs, (sworn.) Resides at Providence; is 47 years old; mariner 35 years, in all capacities—principally on the Sound, on all kinds of craft; been about 20 years pilot or master of steamboats.

Was on board Neptune 14th July, 1846, as pilot. Left New York about 5, p. m. Capt. Henry Harris was also pilot on board. Thos. Davis was captain of boat, and she had her full complement of men, as he believes; was not on board the trip before. Witness had watch fore part of the night. Weather was clear, except black cloud at east. Between 9 and 10 the cloud was about two hours high, or at height of sun at 2 hours above horizon, and closed down to horizon, and spread N.E. and S.E. Neptune was running E. by N. Witness stood in front part of wheel-house, midships, on the look-out. Driver had the wheel. Witness was at middle window of wheel-house, about the middle of the

boat. Wheelsman was under his directions. Could then see ahead from ¼ to ⅜ of a mile, so as to discern an object; should not think could see any thing, except a light, further off. Neptune was going at about 10 miles the hour. About 25 minutes before 10, first saw schooner, (Iole,) N.; was then about 1½ miles from light boat, Stratford shore light bearing E. by N. ½ N. Schooner was then directly ahead; could just discern her by side of flagpole. Wind was about N.; quite a strong breeze. Could not tell what course of schooner was; could not see her plain enough. She was trimmed close aft, or nearly so; might have had her sheets a little eased off, that brought her sails edgeways towards him, and could not tell whether she was a sloop or schooner.

Witness ordered the wheel hove hard starboard immediately; and in less than ½ a minute ordered bell rung to stop the engine, seeing [we] were coming very near; and then rang to back engine, and by that time were close to schooner, and soon struck.

The effect of heaving wheel starboard was to bring boat up to northward, and altered course of boat to about N.E.

Thinks schooner was heading about N.W. She was square across bow of Neptune when they came together. Schooner had no lights; customary for sailing vessels on Sound to show lights when steamboats are near. Thinks schooner could have easily fallen off with the wind, if she saw the steamboat. If she had altered her course a very trifling, by falling off at any time within a mile, she could have easily cleared the N. As soon as struck, crew of schooner got on board N. Boat of N. was immediately lowered, and sent out to see if could find any body. It returned without finding any person; and captain took it himself, with lantern, and went out again, and was out with it about 25 minutes. Came back without finding any person. She was then hoisted up, and N. started, first northward and directly across the Sound; from collision ¾ to 1 hour, N. lay by, before going on; found N. leaking some; and, after consultation, it was thought *it* more prudent to return to New York. Got back to New York at ½ past 3 to 4, a. m.

Schooner ought to have set a light, or altered her course. Pretty much all vessels set a light, in dark nights, when steamboats are near. It is impossible to see sail vessels any distance such nights without.

N. had two large bright lights, which could easily have been seen 4 or five miles off.

If schooner had altered her course ¼ a point within 15 or twenty minutes of collision, would easily have avoided it.

Schooner could very easily have gone to leeward, not so easily to windward, of N.

Witness changed his course to about N.E. to windward, and considered that the prudent and safe course to take; changed it only to escape schooner.

According to his experience in meeting sail vessels in that way, it is [the] proper course for steamer to go to windward of schooner.

Thinks there were from 200 to 250 passengers on board the N.—not a great many ladies.

Collision was caused by schooner not setting a light, and not altering her course when she saw N.

Not aware of any thing that could have been done on N. that was omitted to avoid the collision, according to his judgment and experience; and every thing was afterwards done in their power to save life and property on schooner. Schooner sunk in about eight minutes after collision.

Houghton (clerk of boat) [and] Davis (a passenger) [were] in wheel house at the time, with witness and man at wheel. Witness first discovered schooner. Captain Davis had turned in, at back part of wheel-house, 20 or 25 minutes before collision. Masters usually retire after boat gets well into the Sound.

Witness had sailed the boat before that as master, but came on board that day as pilot; was appointed by Mr. Law. No time was specified nor wages. Witness was at time employed on board Massachusetts, and it was understood that boats belonged to same concern. Witness was transferred to N. Both boats had been running to same places. Does not know that they had been in opposition. Does not know that Harris, 2d pilot, had been on this boat before. He was also transferred from Massachusetts. Thinks that was Capt. Davis' first trip at that period. Capt. Rollins had been master before; understood [that] he and his pilots had been transferred to Oregon that day; thinks it was about first of flood when he left New York, but does not recollect about it. Did not notice that particularly. Light boat about 55 miles from New York. Thinks collision was a mile or mile and half from light boat.

A drunken man fell into dock 15 or 20 minutes before leaving New York, and was drowned.

Did not know or hear on board that N. leaked when she left New York.

Sound 8 or 9 miles wide at place of collision. Thinks N. was a very little nearest south side of Sound, and on usual course he has been in habit of taking on board steamboats. Judges his position from what had observed days going through the Sound. Did not at time see the shores. Thinks discerned Conn. shore, but not plainly. No recollection of looking at Long Island side. Conn. shore about 5 miles off; could see it plainest above.

Could see light boat probably 3 or 4 miles off, and Stratford light about 5 miles. When he first saw schooner, she bore E. by N. from Neptune, directly ahead. Could not tell how she was steering, or whether going up or down Sound. Did not look at her with his night glass; had no time; his whole attention was directed to attempting to clear her; and took what he thought proper measure, by throwing wheel starboard. Judged she was going up or down the Sound, and that was the precaution always taken to clear them; probably 100 to 150 yards off when discovered how she was heading, but could not tell distance with any certainty. Put his wheel hard a-starboard, and thinks that altered his course 4 to 4½ points, and got his wheel so before saw

how schooner was heading. As wind was judged she must be going up or down Sound; and besides, if running across Sound, sails would have shown differently. Steamer struck stem on, supposes starboard side of her stem, as that was more indented than the other.

Thinks schooner would be running 6 or 7 miles per hour. Hit her on larboard side, nearly between her two masts.

Should judge schooner was heading about N. W. when they struck. Her boom was not thrown off much. She would lie up to about N. W. on that wind; and struck her nearly mid-ships, about at right angles.

Can't say what would have been [the] effect if he had not altered his course; vessels were so near to each other.

If schooner had not altered her course steamer would have cleared her. Saw schooner alter her course a minute or 1½ [minute] before striking. Presumes she was previously heading W., or within ½ a point of that.

Discovered she was going up the sound 2 or 3 minutes after he saw her; not over 3 or 4 minutes, he should think, from time he saw her till they struck. If he had thrown his wheel larboard, should have escaped her; but that would have been contrary to usage of passing vessels.

If the schooner had kept her course just as she was struck, the steamer would probably have cleared her, if she had not altered her own course; and thinks would have cleared her 15 feet.

Thinks rang bell to stop in one minute after saw how schooner was—perhaps 100 to 150 yards off; rang bell to back as soon as he supposed engineer had time to stop. Know by motion of boat that engine had stopped. Can always tell in wheel-house whether engine is in motion. Had not left wheel-house, except to take supper; had not laid down, or sat down.

It is usual for sailing vessels to alter their course, or set a light, when they see steamer coming.

Was not requested by passengers to go into Stratford Point after accident. Did not tell any of them that he knew little of the coast. Did not tell any one that he [was] not [a] regular pilot. Had nothing to say to passengers. Did not say he could not put into New Haven.

Watch was set about 8 o'clock. Did not notice black cloud after put back for N. Y.

Did not consider collision a severe one. Captain reported stern leaked some. Weight of steamboat, not going very fast, would break in an old vessel, without steamer feeling the blow much.

It is usual for sailing vessels to set lights in passing steamboats, or coming up to them; commonly set in shrouds or rigging. Considers it duty of vessels to show lights, according to practice in Sound.

If he had known the course of schooner, should have thrown his wheel as he did, because schooner might have hauled off on wind. Stern of steamboat injured very little; put on a small piece to repair her.

Vessels on wind can keep away quicker than luff.

With the wind that night, schooner could hold about a W. course—would probably fall off a little south; so would naturally waver a little, as wind [was] more or less fresh.

Henry A. Houghton, (sworn.) Was clerk of steamboat; been on the Sound only the past season; was on Neptune night of Collision; was in wheel-house; night was clear, but dark, and equally to eastward. Should not think could discern objects one-half a mile from steamer. Could see light several miles. Saw schooner moment after Captain Childs named her; she appeared to be about dead ahead at time, from ¼ to ½ a mile off. Wheel of Neptune was put a-starboard, which headed her round more northward and to windward. Witness looked for vessel; saw nothing except mast till she luffed up; bell was rung to slow, stop her, and back her, almost at instant; when schooner luffed up was on starboard bow of steamer. Witness saw her luff up; immediately on that (½ a minute, perhaps,) concussion. Struck nearly head on, bearing a little on starboard side. 5 or 6 persons came on board. Saved nothing from wreck of schooner. Schooner's sails appeared to be flapping in wind immediately before collision; did not see her sails till she luffed; saw that she did luff from position of steamer, and circumstance that it was done so quickly; throwed her broadside to view; had not seen it before. When first saw schooner she was nearly dead ahead, bearing a little, if any thing, on starboard bow; and if had remained in that direction would have struck if wheels of steamer had stopped. Thinks steamer would have cleared her, though so near, if she had not luffed. Did not think it necessary for schooner to do any thing; but it would have been prudent for both to try to keep out of the way; proper way would be for steamer to go to windward and schooner to leeward when so near together.

Thinks bell was rung about same time schooner luffed; had not observed any change in her course previously; vessels then not more than 5 or 6 lengths of steamboat apart; she is probably 250 feet long. Witness has no skill in management of vessels. Is now on the Governor, between N. Y. and Stonington. Thinks Mr. Law was principal owner of Neptune at time. Had not been in wheel-house but a minute or two before collision. Witness had been previously aboard the Oregon. His first trip on Neptune was on 19th May. Thinks Captain Rollins and his pilots had been transferred to Oregon the day of collision. Neptune, a few days before, perhaps a week, had touched a rock in Hell Gate.

She leaked some before the collision; does not know that pumps were going that day, before collision, to clear her. Witness ran forward as soon as struck; did not look over; saw masts, and was afraid would fall on deck. Thinks she sunk in 3 or 4 minutes.

Small boat was lowered immediately from steamer, and 3 or 4 men got into her, but schooner sunk before got round; boat out 25 minutes or ½ an hour.

Nathaniel S. K. Davis, (sworn.) Was passenger on steamer; was in

wheel-house an hour before collision. Captain Childs asked witness to keep look-out to see if could see any thing. Was a large cloud to eastward, and was very difficult to see ahead. Acquaintance of Childs. Could not see but short distance to east; could see pretty plain in any other direction. When first saw schooner, appeared to him a little on starboard bow. Childs saw her first, and ordered wheel put hard starboard; as she kept her course, ordered steamer stopped. Schooner appeared to be heading directly for the steamer. As soon as was time to stop boat, ordered her backed. Wheelsman had reach of bells. Schooner was very short distance off when first seen. She luffed up in wind moment before striking, and sails were flapping when they struck; if she had not luffed should have cleared her; saw her luff. Putting head of steamer starboard brought her bows round to northward, towards Connecticut shore.

As soon as struck, Captain Davis came into wheel-house and ordered helmsman to lower boat, and then rang the bell to stop boat backing. Small boat went out twice.

No relation of Captain Davis; is not a waterman, but is often on water; is a clerk on shore; no experience in nautical matters, further than sailing pleasure boats. Lives at Providence; will be 18 next March.

Steamer minded her helm very quick, and rounded to immediately, and headed slantingly towards Connecticut shore when she struck; thinks she came round so as to head about to Stratford light; changed to this almost immediately; and after that change, schooner changed her course; steamer had minded her helm before schooner luffed; could not fix the distance they were apart, but were very close. Witness thought steamer would go clear of her some distance ahead, say ½ distance from here to City Hall; but vessels were nearer together than he thought; distance very deceitful on water, and at night. When first saw schooner, looked like a black speck, and thought she might be two miles off; but, as turned out, must have been within ½ a mile.

December 8—(Continued.)

Witness was standing at right of Childs, right hand side of wheel-house, when he first discovered the schooner; noticed light boat on middle ground at time of collision; it bore on starboard side of steamer, and Stratford revolving light seemed directly ahead. If schooner had borne away to leeward, she would have cleared Neptune widely. Went into hold of N. with Capt. D., after collision; found water there; ran down a stick, and should think there was all of 15 inches directly in centre of boat.

Saw same hold just after leaving N. Y., and does not think there was more water after collision than before. Boat keeled very much when she left N. Y., and it was reported amongst passengers that it was owing to water in her hold; but it was really owing to ashes heaped

up on one side, which were thrown over after she got under way, and then she righted.

Capt. D. said she had about that quantity of water all the while—bilge water.

Heard a hail from schooner; could not tell what was said; it was a kind of squeal; but just as words were heard boats came together; hail was as they luffed up; hardly any time at all between the two acts. Thought before that, as he discovered she was so near, the boats would come very close together, but would pass clear. Witness heard no other hail; did not look at compass to take the bearing of the light ahead.

An hour before saw schooner, Childs requested witness to look out to see if any thing was ahead. It was very dark. Well acquainted with Childs, and wished to gain some knowledge of Sound himself. Does not know how tide was; but Capt. Davis told some of passengers it was low tide at Bridgeport, and would be very difficult to get in there.

Henry Harris (sworn.) Is 56; resides at New London; been on water 40 years, (deducting about 7,) from cook to pilot and captain; on fishing smacks 25 years; some years since coasting up and down Sound, Providence and N. London, to N. Y.; and since last day of March, 1846, has been pilot of steamboats; went as master at 22 years; 5 years pilot from Montauk Point to New London. Was pilot on Neptune on night of collision. Went below a little after 9, p. m.; wind fresh from north; a black heavy bank lay (2½ hours above horizon) by from north to about S. E.; noticed weather very particularly before going below. Spoke to Captain about weather. Should not suppose could see a vessel, head on, at east, over ¼ of a mile distance. Childs had first watch on deck; first watch generally stands to about 12. Witness had not got to sleep, and heard several voices as of people in a kind of fright; was in a room forward of water wheel, on starboard side of boat, on her guards—a state room. Witness sprang from his berth, and said to man in room, he believed were coming in contact with some vessel; as he spoke vessels struck.

Witness ran through passengers directly to wheel-house, (many deck passengers, men, women, and children,) and then saw schooner.

Steamer was then backing off, and was about a rod from schooner. Took observation as to their position; floating light at Stratford middle ground, on light boat, 4 points or more off his starboard bow; Stratford Point light (revolving one) a little on larboard bow, but nearly right ahead. Asked Capt. Childs if boat had been got down, and turned to go to boat. Childs said it was ordered down.

True course E. by N. from Huntington to light boat; and recollects saying to Childs, it would be best to keep about that.

Schooner pointed her head almost to the wind, and nearly N. W., or N. N. W.

Witness always, in two vessels meeting head and head, gives vessel on the wind preference, and gives her windward berth, and passes to leeward; as general rule, goes to leeward of vessels on a wind.

As course of those vessels was, (say schooner W. by S. and Neptune E. by N.,) should certainly go to windward, as the prudent course to take.

Schooner had wind free, 3 or four points free; such schooner could lay within 6 points of the wind.

Her sheets would be a little started, but her sheets and masts would be about in a range to Neptune.

Necessity of steamer going to windward is, that schooner might, if she fell off, still be under headway and command of her helm, but if she luffed up would lose her command.

Steamer carries a weather helm, from burthen aft, in free wind, and would, therefore, come up into wind rather quicker than she will fall off.

Schooner showed no lights that he saw, and Capt. told witness he had none.

It is custom and rule with all coasters, fishermen, &c., on Sound, in any thing like dark or obscure weather, to show a light; especially so in calm weather, when vessel has no motion. No difficulty at all in avoiding schooner if she had showed a light. Could not, if shown 15 or 20 minutes before collision, have caught steamer had she tried.

No difficulty, whatever, in schooner keeping away and avoiding Neptune, after seeing N. 2 or 3 miles off.

Was 7 to 9 miles from Stratford light; did not notice whether Huntington light was visible; could not see a light so far to west as east, as horizen was clear W.

Witness went immediately aft to hasten off boat, and found boat lowered, and men in her, and should have got in himself, but she was shoved from side of boat.

When he got back to wheel-house, observed schooner was sunk to about half her masts; five minutes or more after that, small boat returned, and Capt. Davis took boatmen and went out in her himself.

Should think steamer lay by ¾ of an hour after collision. Captain and men from schooner were on board Neptune before witness got to pilot-house. Had conversation with captain of schooner after leaving wreck; he said he thought N. could have avoided schooner, as they saw N. 2 or 3 miles off. Witness asked him if he had lights up, and he said no; witness told him it was wrong, and that he knew could see steamer much farther than they could see schooner at east, and black cloud there also. Captain said no; did not expect steamer could see them so far off as he saw steamer. Witness told him, had done very wrong to run such a night without showing lights; did not make much reply to what witness said.

That was first trip witness had been on board Neptune; had before been on board Massachusetts; no distinction between witness and Childs as to first or second pilot; both had same wages.

Collision was 15 or 20 minutes before 10, p. m. When weather is thick and stormy and bad, it is not usual for either pilot to go below. It was starlight at west that night; not foggy or rainy; but there was a

dark, thick cloud at east, spreading further to north than south, but was gently rising. Should not think could see vessel with sails edgewise towards him over ¼ of a mile when he went below.

If schooner was heading for Norwalk light, her course would be about N. W. by W. She would not be on the wind, if north, and her course was W. She would be 2 or 3 points on wind, on starboard tack.

Estimate distance from N. Y. to light-house on middle ground at about 45 miles.

It was ebb tide when went through East river, but cannot tell exactly, or when it changed; did not notice, or if did, does not now recollect. Ebb tides set east from about Throg's Neck, and west or south from same place.

Witness thinks if schooner was seen in her trim, was ¼ to ⅜ of a mile from N.; it was prudent and proper course for steamer to go to windward of her; if Neptune was one point to windward, and going 10 miles per hour, though schooner was going 7 miles per hour; it would not have been prudent to attempt to go to leeward, as both would probably be run down, as schooner would naturally keep off.

If schooner held her course without changing, it was proper to go to windward, having greatest speed and heading one point further north. Whether would have struck by attempting to go to leeward, would depend upon distance off of schooner.

If schooner luffed ¼ of a mile off, Neptune would have cleared her to windward, as her headway would have been deadened.

Should think could not have come together if wheel had been thrown hard a-port instead of starboard.

Could see make of land on Connecticut and Long Island shore, when he came on deck; could not see the shores. Could see general outline of land 6 or 7 miles east and W. Sound about 14 miles wide at place of collision, and N. was W. by S. of floating light.

Made 81 trips through Sound on board Massachusetts. Could not, that night, tell whether vessel directly ahead ¼ of a mile off, was going E. or W.

Noble C. Murray (sworn.) Driver had been 7 years wheelsman on board the Neptune. He is now in New Orleans; went out in Mutual Safety, 4th of October; he is first-rate seaman.

Knows Thomas Saltspaugh; he was first engineer that night; had been 3 months on board as first engineer and 3 months 2d; he is now in Neptune as engineer, at Tampico, Mexico; left here about middle of August.

Driver was 7 years on Neptune at sea, and Sound 2 years later.

For libellants.

William King (sworn.) Resides in N. Y.; clerk in store; was passenger on Neptune at the time of collision; was in his berth, not asleep; went below at about 9; it was a bright, starlight night and clear. Saw no clouds or dark banks of clouds; did not observe weather particularly, but recollect it was clear and could see shores on both sides; felt shock,

and thought it very severe. About a quarter of an hour before, bell was rung for something else; but heard no bell for 15 minutes previous to collision; first thought struck a rock, and went immediately on deck; saw passengers rushing forward, and witness went forward; heard somebody calling for a boat, and witness tried to get where they were; some one called out overhead to let the boats alone. Went forward, and understood that Neptune was leaking badly, and proposed to have a committee organized to see what was the matter; 2 or 3 passengers went below and reported water in the hold; made inquiries for captain of boat, and for a long time could find none. Shortly after a person came on deck without a coat on, and seemed to have just come out of his berth, and said he was captain for time. Witness asked what was to be done; Captain said should go on to Newport.

Harris, the pilot, came up, and said boat was not safe to go round Point Judith. She was not seaworthy then, nor when she left N. Y., said he had just heard she had been on the rocks just before, and was not seaworthy. Childs was present at that conversation with Harris, but made no remark as to seaworthiness of boat, or about her leaking. Passengers requested both pilots, as they stood, to take the boat into Bridgeport, New Haven, or another port, (don't recollect name,) and they answered they did not understand the harbors. Supposed they were going into New Haven, but found boat had put about for N. Y.; when he came on deck, night was clear; found north star without difficulty.

Conversation with the pilots was near the pilot-house; it was immediately after the collision, and after men got on board from schooner.

Alexander C. Poillon (sworn.) Passenger on board Neptune; was in his berth at time of collision; went below about 9; it was starlight night; quite clear, and stars thick and unusually bright, and saw no clouds whatever; the same when he came on deck, after the collision.

Shock was first he knew of collision; was partially asleep; heard a bell about same time of collision. Could not tell how Neptune was heading when he came up.

William Thorn (sworn.) Mate of schooner Mary Clark; was on board her 14th July last; between 9 and 10, p. m., was west of New Haven, bound to N. Y.; wind was about north; night pleasant and clear; stars in sight; did not observe any heavy bank to eastward; saw steamboat lights near Stratford Point or Black Rock; appeared to be in some trouble; at that time there was no difficulty in seeing all around, in every direction. Could see a vessel a great way off.

Steamer was N. and W. of him, inside, 2 or 3 miles off probably; did not appear to be steering correctly.

Henry A. Walton (sworn.) Was passenger in Neptune; had been in his state-room about three minutes at time of collision; thinks night was clear; did not observe any clouds; sky was clear, as far as he noticed; saw stars; had just got in bed; not asleep; in his berth 3 to 5 minutes; heard bells rung about same time of collision; shock was heavy.

Capt. James Wade (sworn.) Commands Kalos, schooner in coast-

ing trade; has been on Sound repeatedly; not usual for sailing vessels to carry lights in the Sound, in clear weather, when can see land on each side of Sound; never heard of any such usage. Rule of navigation is for sailing vessel to keep her course, when she meets a steamboat (as schooner did.)

When meeting, as these two did, it is the duty of steamboat to pass sailing vessel without crossing her track, but might take either course which would be sufficient to clear her

In position of the vessels, Neptune ought to have borne away; no man but a lubber would have tried to go to windward of schooner; so, if both had held their courses, would not have touched each other; and if steamer had put her helm a-port, could not possibly meet.

If pilot did not know which way schooner was going, he ought not to have varied his course, but to have stopped his boat.

Schooner would get out of way of steamer quickest by luffing; luffs quicker than she keeps off. Track of steamer bearing E. by N. is to leeward of schooner, bearing W. two points on N. wind, and will then certainly pass schooner easiest to leeward.

Ambrose Tucker (sworn.) Objected to by claimant as incompetent. Was one of crew of schooner Iole night of collision. Cook lives in Nova Scotia; has not seen him in city. Witness watch below; had got part way out of cabin when they struck; night was pretty fine; could see distinctly; did not see any bank of clouds in any direction.

When he came on deck, sails of schooner were full; he observed them, and schooner was pressing down upon Neptune.

Vessels had struck when he first saw them; it was wind pressing on sails full, which bore her over on steamer; side of schooner was cut into galley and made for N. instantly, as thought was sinking; bow of N. was ½ through deck. Been about five years in sailing vessels; never saw a sailing vessel carry lights such a night as that.

Watch below asleep; woke up by crash of vessels coming together, and ran up as he was, with only taking his hat; remained on bows of N. till schooner sunk; she sunk as soon as steamer backed; masts were standing up straight when he got aboard; sunk in about five minutes; masts were in her, but canted over towards N.; 2 or 3 planks from keel under, but her sails were still full; noticed particularly state of her sails; foresail was torn, and was observing that; torn about 3 cloths in the leach. (To court.) Schooner was heading straight up the Sound, and not towards either shore; looked to the shores to see where they were.

Saw them get boat down aft to go to schooner; went to help, and as he went aft saw boat had started; boat got out but short distance when schooner went down; bow of N. was wedged into side of schooner, and witness climbed up whilst she lay so.

Wednesday, December 9th.—Continued.

Joseph Sumner, sworn. Objected to by claimant as incompetent; master of brig Olive, trading between Eastport and N. Y.; 16 years

mariner; 5 or 6 years master of vessel; been 15 to 20 times through Sound.

Master of Iole 14th July last; his watch below at 8 p. m.; went below ½ past 8; night was clear, starlight; could see across the sound both sides; did not observe any heavy clouds in any part of horizon; first notice of danger was mate came to companion way and called out that a steamboat was coming into them; when he went below wind was N; steered W., at rate of 7 knots; ordered them to keep W.; that course would have taken them to Captain's island, or near that, off Sawpits, making allowance for ½ point variation of compass; kept up so high in order to be at windward, if wind hauled westward, which had appearance of doing; when called, got to gangway as quick as could do so; first looked ahead and saw schooner was heading up the sound by land on northern side; looked astern, and saw Stratford Point and light-boat, latter about two points on starboard quarter, that would make course of schooner about west; then asked where steamboat was; received no answer; then looked under main boom, and saw steamboat coming head on to his broadside; she was bearing about south of him, as he judged from Old Field Point light, which was about two points on starboard quarter of steamboat; steamboat appeared 15 to 30 feet from him, but cannot judge distances accurately at night; her wheels were then going. Could, at time, see the land very plain on Long Island side; struck almost immediately, about midships; schooner then had about 3 points of sheet off, and sails were full when he came on deck; that must have been about a west course of schooner; steamer struck to leeward; was dead to leeward of schooner when [he] saw her; cut in 12 feet with bow, and within 4 feet of through the schooner; bow pressed through the galley and stove it to pieces; she remained fastened in to schooner a minute or two; witness made to bows of steamer as soon as could, called for a rope from her, received none, and got hold of bolt rope of schooner, and got up part way on bows of steamboat, and then thought of woman passenger on board, and got down on lumber to try to save the woman; found could get no footing, as lumber was afloat, the schooner having sunk under it; then climbed again by rope of sail to bows of steamer; as soon as got on bows asked for captain of steamer; two or three voices repeated there was no captain on board; same as to mate.

Witness then went aft to find small boat; searched 4 or 5 minutes for it, and when he found it she was lowered, and 2 of schooner's men and 2 others in her; it was shoving off as he got there; went to search for passengers, Mrs. Murphy and child.

Witness then returned to bow of steamer and saw small boat row up to where schooner sunk; saw no more of her till her return.

Did not hear bell of steamboat ring to stop her. Schooner was in good order; about 80 tons; had cargo on board. (Proves bill of lading of part; deposition to this fact to put in.) The sky continued clear; saw several vessels both sides of schooner, one ahead and one to leeward; before collision, one to leeward was bearing about S.E.; should

judge could see vessels, before and after collision, two miles in all directions; never saw vessels carry lights in Sound such a night.

If steamer had been running her true course when he came on deck, would have cleared schooner, for she was dead to leeward; spoke with some one on board the steamer; don't know who; heard no one called captain; was told there was none on board. Witness talked with John Driver; (defendant objects, and ruled out;) had conversation with Harris after arrival at N. Y.; he said he had turned in at time of collision; did not explain cause of accident.

Witness never said or admitted to Childs or Harris that he ought to have carried lights, or that accident was owing to his not doing so.

Brought the woman and child from Eastport; child about 3 years old; knew her in Eastport; was a very short time getting from his berth to deck; did not call for woman and child because his whole mind was on saving his vessel, and did not think of them; after got on deck had not time to think of woman and child; thought of his own life and to save schooner; thinks tide was about slack and low water.

Jacob Shackford, sworn. Been mariner and commanded vessels 25 years; been through Sound 100 times; never showed a light during that time; and not then common practice of other vessels to show lights; not sailed there within 7 years, and does not know much of present practice. (Looking at chart and plat) witness says, if steamboat had not altered her course north, could not have struck at all, even if schooner changed her course north; if steamer had put her helm a-port would certainly have gone clear; schooner on such wind would not make much lee way, not over $\frac{1}{8}$ of point.

Course of schooner, as shown on chart, was to windward of steamer, and, if going 5 to 7 knots, not prudent for steamer $\frac{1}{4}$ to $\frac{3}{8}$ mile off to attempt going to windward of her; should have held her own course; should have stopped her engine till she could see what course schooner was going.

John Field, sworn. Been at sea till within $1\frac{1}{2}$ years; in coasting trade 9 years as master of vessel; on Sound, frequently; never knew sailing vessels to carry lights in clear weather, unless at anchor.

Schooner's track W. must be one point to windward of steamer E. by N.; not usual or safe for steamer to attempt, in such case, to go to windward; if steamer is in doubt as to position of schooner, her duty [was] to stop till it could be ascertained; schooner would luff quicker than keep away—much.

John Small, sworn. Master of schooner trading between E. and N. Y. 10 years; frequently navigated Sound.

Not usual for sailing vessels carrying lights when not at anchor; sometimes seen, but very seldom. Course of steamer was to leeward of schooner, and must have been so, or could not have struck leeward side of schooner; schooner would luff to avoid near danger in preference to bearing away; can luff very easy and quick; pilot of steamer could accordingly calculate on her changing her course in that direction, if at all.

For claimant.

William Potter, sworn. Captain of Massachusetts, run on Sound 28 years; master of sailing vessel 13 or 14 years, and of steamboat 1½ years; was pilot of steamboat 13 years on Sound: meeting as these vessels are supposed (dead ahead ⅛ to ⅜ miles apart,) has invariably gone to windward of sailing vessel, when he had sea room; that is the most difficult position, and therefore steamboat ought to take it; if schooner going 7 knots and steamer 10, and steamer should stop ¼ or ⅛ of mile off, could not tell what consequence would be; when both pilots receive same wages, no difference of grade.

Usual to have two pilots on board large steamers, called, commonly, 1st and 2d; sometimes both are first; Childs was on his boat 4 or 5 months, and so was Harris; thinks Childs was considered first pilot; was on board Narragansett when Corinthian was sunk; schooner steering W. would be to windward of steamer steering E. by N.

It would be impossible for Neptune to strike schooner midships, meeting her head and head ¼ of a mile off, unless schooner hauled to windward; in such case schooner should have held her course; schooner could luff up easier than bear off, but not half so quick as steamer; if wind is fresh, schooner by luffing loses her headway.

Middle Ground light-boat about 60 miles from N. Y.

Nathan Childs, again. Remained in wheel-house after collision; no knowledge of seeing Mr. King, (passenger;) had no conversation with him; heard none between him and Capt. Harris. Witness did not say to any body that Neptune was unseaworthy, nor did Capt. Harris in his hearing; nor did he say boat was not fit to go round Point Judith; but said, under all circumstances, he thought it would be more prudent for boat to come back to N. Y.

13 Sept., 1844. Bill of sale from Colgus ⅜ of Neptune to Edward B. St. John.

Ibid.	do.	do.	Wm. Rollins $\frac{1}{14}$ to same.
1 Oct., 1844.	do.	do.	Jas. Reed ⅛ to same.
do.	do.	do.	Thos. B. Winston $\frac{3}{14}$ to same.
13 Sept., to same.	do.	do.	Jno. & J. K. Robinson & J. Caldwell ⅜

Nathan J. K. Davis, again. Saw witness, Mr. King, on board Neptune; was present at conversation between him and Capt. Harris; Childs not present; it was on upper deck in rear of wheel-house; Childs was in wheel-house; Harris did not say N. was not seaworthy when she left N. Y., nor that he would not have gone in her had he known her condition, nor anything to that purport, that witness heard, and was with him during all the conversation. Harris said it was very difficult and bad to get into Bridgeport in night, as channel was very narrow, and it was about low tide; passengers were endeavoring to pursuade him to run the vessel ashore, were afraid she was sinking; passengers were much frightened, a great deal of confusion, ladies all crying; saw

12 or 15 women on forward deck, as near as could judge, in confusion; Harris said nothing about N. being unseaworthy.

Henry Harris, again. Had conversation with 2 or 3 passengers out on deck; cannot recognise King as one; conversation was very short; was abaft pilot-house on upper deck; it was on his return from after gangway to get down yawl boat. The gentleman asked witness if boat was sinking, had better run her ashore on nearest land, (L. I.;) witness answered in this way, if boat was not seaworthy, would put her ashore, or not go on; his life was as valuable to him as theirs to them. Recollects perfectly well that was manner in which he used seaworthy. Witness did not say she was not seaworthy before the collision; did not know to the contrary. She had reputation of being a strong and safe boat, strongest on Sound for rough weather.

Did not tell him witness did not understand any of harbors except Bridgeport; Capt. Davis said could not go in there in night.

Passengers named New Haven and Stonington; witness said if could go to Stonington, could to Providence, and that New Haven was good way off; did not say could not go into New Haven; considers himself a pilot for that harbor in night, or in all kinds of weather, and all sorts of vessels.

Passengers seemed in great confusion and great alarm. Captain Davis said would see if boat was making water fast, and if so, would go into nearest port; went below with captain, and saw some water in run; did not measure it or see it measured. Captain returned and said boat was not making any water, but, because of alarm of passengers, concluded to return to N. Y. Should think it would endanger steamer and lives of all on board to stop her within $\frac{1}{4}$ or $\frac{1}{8}$ of a mile of schooner coming dead on her.

If schooner had not luffed into wind, steamer would have cleared her a good many rods.

Effect of her luffing was to destroy her headway nearly at once; might have forged ahead her length or so. If helm of schooner was let go, she would come right up into wind, and her sails would be flattened.

Always heard New Haven was 60 miles from N. Y.; Middle ground, 45 from N. Y.; to Stratford shoals, 45 miles. Should think Neptune might have been stopped against that wind, within her length or length and a half, perhaps more. She would, as he thinks, go $1\frac{1}{2}$ her length, at least; does not know her length.

Saw and talked with Capt. Sumner after collision; does not now recognise him, but said he was master of schooner.

Stephen Manchester, sworn. Been on Sound between 25 and 30 years as mate, pilot, and master. Master of sailing vessel 6 or 7 years; pilot 7 or 8 years of steamboats; does not know that there is any usage or rule about vessels showing lights in Sound; some do, others not, in darkest nights; should not think it prudent to sail in dark night, where steamers are running, without showing light; used to show it himself; if dark, behind vessel, and above her hull and mast; it is as difficult to

see her as if whole horizon was dark; if met schooner on wind ½ or ⅝ of a mile off, head on, wind north, should haul to windward of her, as it would give her a better chance to get off; should consider it would be more natural for schooner to bear off; if wind is stiff could keep off as easily as luff; by luffing she would lose power of wind; she would come right into wind if her helm is left.

Should think if two vessels were steering ½ point apart, would clear each other, unless wind was so heavy as to make heavy lee way; steamer would go to windward; steamer would clear her further by throwing helm hard a starboard; if did strike, it must of necessity be that schooner luffed and changed her course; pilot of steamer would calculate schooner would keep her course or haul off; moment steamer bore up to wind, schooner would see she had changed her course in that direction, by ranging of her lights.

Commanded R. J. all summer; been in Narragansett till to day; now laid up; in same line as the Mass's; Middle ground 60 miles from N. Y., and New Haven commonly called 70 to 75 miles; has heard it called more and less; never heard it called 60 till to-day. Never was on Neptune; can't tell in what distance her headway could be stopped.

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If sch'r first seen over starboard bow of steamer, so much more necessary for putting his helm a starboard and going to windward.

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Should not attempt to cross track of sch'r if to leeward of her, and within ¼ or ⅜ of mile off should have borne off to southward; should not, so near as that, attempt to cross a vessel under any circumstances. As sch'r was would be 1½ point on wind; starboard tacks on board; on starboard tack. No law about vessels meeting on opposite tacks; for one on starboard tack to hold her course, and the other to give way and go to leeward. Testimony closed.

UNITED STATES OF AMERICA,
Southern district of New York, city,
county, and State of New York, ss:

Be it remembered, that on this second day of December, in the year of our Lord one thousand eight hundred and forty-six, I, George W. Morton, a commissioner, duly appointed by the circuit court of the United States, for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act, entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at No. 95 Columbia street, in the city of New York, in the said southern district of New York, in the State aforesaid, Thomas J. Davis, to testify and the truth to say, on the part and behalf of the claimants, in a certain suit or matter of controversy, now depending and undetermined, in the district court of the United States, for the southern district of New York, at the city of New York, wherein Zebulon A. Paine and others are libellants, against the Steamship Neptune, her tackle, &c., Edward B. St. John, claimant; and the said Thomas J. Davis being about the age of forty-four years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Thomas J. Davis, and he did thereupon depose, testify, and say as follows, viz: That he is now confined to his bed by sickness and unable to leave the

house. That he has received and accepted a full discharge and release from all liability from the owners and all persons interested in the steamboat Neptune, and is in no ways interested in the event of this suit; that he resides at 95 Columbia street, in the city of New York, and is a mariner by profession, and has followed the sea and boating for the last 40 years; during the greater part of the time on Long Island Sound, and the waters about New York and up the North river, and has been captain over twenty years of steamboats and sailing vessels, and has commanded steamboats for sixteen or seventeen years; most of my business through life has been on Long Island Sound; witness commanded the Steamboat Neptune on the 14th July, 1846. I took command of her on that day about a quarter past 5 for Providence. The tide was ahead when we started; we were off Fort Schuyler, Throg's Point, at 47 past 6; at 13 minutes past 7 we passed Sand's Point buoy, and at 40 minutes past 8 we passed Huntington light. The wind being fresh from the north, we regulated the watch for the night, set one half the crew, the other half went below. The sky was a very troublesome sky, thick passing clouds, very thick hanging clouds to the eastward, and very dark; the sky to the westward and over head was clear; it was clear, stars could be seen over head and to the westward. I made the remark to Capt. Childs at the time. How far did the clouds obstruct the view in the east?

They obstructed the view very much indeed, it was very dark; Nathan Childs, formerly captain of the boat, and another man by the name of Capt. Harris, with whom I was not particularly acquainted, were the pilots of the boat; they were the two pilots that Capt. Law sent on board from the Massachusetts that day; they had not acted as pilots on board this boat before with me; I had had a slight acquaintance with Captain Childs for a number of years; he has commanded the Neptune and Mutual Safety; I went to my berth directly after setting the watch, which was soon after eight o'clock and 40 minutes. Captains of steamboats generally turn in at eight when they think proper; I remained in my berth perhaps from 20 to 40 minutes; my berth was just 3 feet from the wheel on the upper deck; I was aroused by a great noise; could not tell exactly where it came from, whether from my boat or another, because I was partly up and felt the collision; I was then getting out of my berth. I turned out immediately; Capt. Childs said there was a schooner under our bow; I saw her athwart ships across our bow; one mast on one side of our stem, and the other on the other side of our stem.

The steamboat was entirely stopped when I turned out; I could tell it sensibly when she was stopped, as I was by the steering wheel, close by the engine. As soon as I turned out I looked at the compass; the schooner was heading northwest, as near as you can tell how another vessel is laying; the steamboat was heading about due northeast, according to our compass, and that is very true.

The stem of the steamer was forward of the schooner's main rigging; the schooner's mainmast was on our starboard bow, and her foremast

12 or 15 women on forward deck, as near as could judge, in confusion; Harris said nothing about N. being unseaworthy.

Henry Harris, again. Had conversation with 2 or 3 passengers out on deck; cannot recognise King as one; conversation was very short; was abaft pilot-house on upper deck; it was on his return from after gangway to get down yawl boat. The gentleman asked witness if boat was sinking, had better run her ashore on nearest land, (L. I.;) witness answered in this way, if boat was not seaworthy, would put her ashore, or not go on; his life was as valuable to him as theirs to them. Recollects perfectly well that was manner in which he used seaworthy. Witness did not say she was not seaworthy before the collision; did not know to the contrary. She had reputation of being a strong and safe boat, strongest on Sound for rough weather.

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Southern district of New York, city,
county, and State of New York, ss:

Be it remembered, that on this second day of December, in the year of our Lord one thousand eight hundred and forty-six, I, George W. Morton, a commissioner, duly appointed by the circuit court of the United States, for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act, entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at No. 95 Columbia street, in the city of New York, in the said southern district of New York, in the State aforesaid, Thomas J. Davis, to testify and the truth to say, on the part and behalf of the claimants, in a certain suit or matter of controversy, now depending and undetermined, in the district court of the United States, for the southern district of New York, at the city of New York, wherein Zebulon A. Paine and others are libellants, against the Steamship Neptune, her tackle, &c., Edward B. St. John, claimant; and the said Thomas J. Davis being about the age of forty-four years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Thomas J. Davis, and he did thereupon depose, testify, and say as follows, viz: That he is now confined to his bed by sickness and unable to leave the

house. That he has received and accepted a full discharge and release from all liability from the owners and all persons interested in the steamboat Neptune, and is in no ways interested in the event of this suit; that he resides at 95 Columbia street, in the city of New York, and is a mariner by profession, and has followed the sea and boating for the last 40 years; during the greater part of the time on Long Island Sound, and the waters about New York and up the North river, and has been captain over twenty years of steamboats and sailing vessels, and has commanded steamboats for sixteen or seventeen years; most of my business through life has been on Long Island Sound; witness commanded the Steamboat Neptune on the 14th July, 1846. I took command of her on that day about a quarter past 5 for Providence. The tide was ahead when we started; we were off Fort Schuyler, Throg's Point, at 47 past 6; at 13 minutes past 7 we passed Sand's Point buoy, and at 40 minutes past 8 we passed Huntington light. The wind being fresh from the north, we regulated the watch for the night, set one half the crew, the other half went below. The sky was a very troublesome sky, thick passing clouds, very thick hanging clouds to the eastward, and very dark; the sky to the westward and over head was clear; it was clear, stars could be seen over head and to the westward. I made the remark to Capt. Childs at the time. How far did the clouds obstruct the view in the east?

They obstructed the view very much indeed, it was very dark; Nathan Childs, formerly captain of the boat, and another man by the name of Capt. Harris, with whom I was not particularly acquainted, were the pilots of the boat; they were the two pilots that Capt. Law sent on board from the Massachusetts that day; they had not acted as pilots on board this boat before with me; I had had a slight acquaintance with Captain Childs for a number of years; he has commanded the Neptune and Mutual Safety; I went to my berth directly after setting the watch, which was soon after eight o'clock and 40 minutes. Captains of steamboats generally turn in at eight when they think proper; I remained in my berth perhaps from 20 to 40 minutes; my berth was just 3 feet from the wheel on the upper deck; I was aroused by a great noise; could not tell exactly where it came from, whether from my boat or another, because I was partly up and felt the collision; I was then getting out of my berth. I turned out immediately; Capt. Childs said there was a schooner under our bow; I saw her athwart ships across our bow; one mast on one side of our stem, and the other on the other side of our stem.

The steamboat was entirely stopped when I turned out; I could tell it sensibly when she was stopped, as I was by the steering wheel, close by the engine. As soon as I turned out I looked at the compass; the schooner was heading northwest, as near as you can tell how another vessel is laying; the steamboat was heading about due northeast, according to our compass, and that is very true.

The stem of the steamer was forward of the schooner's main rigging; the schooner's mainmast was on our starboard bow, and her foremast

on our larboard bow. As soon as I supposed that all were on board the steamboat that chose to leave, I rung the bell to back the boat, or was in the act, but reversed the order before she backed; I was in charge of the wheel at the time. The schooner then began to cant over on us; some of them forward told me not to back out from her, as all the people had not got on board of us. I told them to hurry and get them on board; I thought I saw the schooner passing down on us; I held on until all had got on board of us. When I told them to hurry, I said or thought they were taking more time to get on board than I thought was necessary. The main-topmast of the schooner fell close to the wheel-house, so close that I thought it would take the wheel-house off. I then backed the steamboat from under the sail; I saw no lights on board the schooner; the Neptune's light showed very brilliant that night.

With the wind from the north, and the steamboat going east, or east by north, how would the sails of a schooner which was sailing west or west by south be presented to the eyes of those on board the steamboat, they approaching each other on a line?

Very bad edgeways, the very worst position they could present themselves.

How far towards the east could a schooner, sailing in the manner stated in the last question, be seen at the time of the collision?

Not to exceed a quarter of a mile, or perhaps not half the distance; you could not see our small boat that night in an easterly direction not to exceed 200 or three hundred yards. I had a proof of it that night. She is a good sized boat. The collision was about 50 miles from New York; the steamboat was going about 10 miles an hour; we had the tide in our favor.

With the wind blowing fresh from the north, what would be the actual direction of a vessel's motion sailing by her compass due west?

I should calculate she would make from one point to a point and a half leeway. The tide being ebb that night would increase her leeway.

Would a prudent pilot steer a steamboat to the windward or leeward of a sailing vessel that was coming towards the steamboat so as to meet her?

He ought to go to windward of the sailing vessel. A steamboat can go direct to windward; a sailing vessel runs up in the wind and shakes, and can go no further.

Can a sailing vessel keep off without losing much time?

She can; the width of the Sound where the collision occurred is from 20 to 25 miles wide.

Was there room enough for schooner to have fallen off so as to have avoided the collision?

Yes, and 8 or 10 miles to spare.

The wind blowing as it did at the time of this collision, what would be the effect of diverting the attention of the man at the helm of the schooner, and directing it to another object—a steamboat approaching?

If he neglected the helm the vessel would broach to, her head to the north.

How many passengers had you on board the steamboat?

I do not know, an usual number; from one hundred to three hundred, all told.

Was there any difficulty if those on board the schooner saw the steamboat two or more miles distant, in their avoiding the steamboat?

None at all if the steamboat kept her course. You can tell the course of a steamboat as well at night as in the day, if you can see her lights; the light could have been seen that night at any distance, as far as any night I ever saw. We lay by that night, after the collision, from half an hour to an hour, and we lay into the schooner before we backed off from her long enough to have taken off fifty people. I heard nothing more of there being any one remaining on board the schooner, until some time after we backed off from the schooner; then some one said there was a woman and child remaining on board. We then lowered out boats, and I sent my mate; they returned and said they could find neither schooner nor people. I could not think that credible, as I thought the schooner would float, being loaded with lumber. I then went in the boat with a light and some men; I saw nothing of the schooner. I found she was loaded with plaster. I had seen lumber on deck, and supposed she was lumber loaded.

Could you have done anything more than you did do to save either persons or property?

I could not, or any persons belonging to the boat that I know of.

What did the crew of the schooner tell you about their seeing the Neptune?

As soon as I found out who the crew of the schooner were, I went to see them, in the state room on deck. Some of them, (who I cannot say,) said they saw us from three to four miles distant.

The passengers on board the steamboat appeared to be much frightened and confused. The passengers crowded forward on the forward deck and made a great noise and confusion, and made great inquiries for the captain. I heard that often; I was acting as captain and pilot at the time; my proper place was at the wheel, where I was. The clerk came to me at the wheel, and told me the passengers were inquiring for the captain. As soon as I could leave the wheel I went below and showed myself, and then went in the small boat all around the steamboat to examine her, to see if she was injured; I also went in the hold and underneath the cabin floor. The passengers could have seen me at any time, but when I reported myself as captain some of them disputed it, as they said he was an older man than what I was.

On his cross examination. Captain Rollins was captain of the boat on the 13th of July; I was appointed captain on the 14th; then he gave me charge of her, which he had done several times before. I was pilot of the boat on the 13th of July. Rollins had commanded her for a number of years. I was pilot of her all last season, with the exception of one month, and this season up to the day of the collision. Captain

Rollins and myself were the only pilots; he did [not] carry two pilots as they generally do. I always carried the boat through.

When Captain Rollins left the boat on the 13th or 14th of July, did any others of the officers and crew also leave her?

The mate and one wheelsman went with him. I do not recollect about the engineers, but I think they remained. We had two engineers on the night of the collision. I think the name of one was Lloyd and the other Overbaugh, or some such name. Mr. Law I refer to in my direct examination, is Mr. George Law, of this city, but whether owner or not I do not know.

Shortly before the day of the collision, had the Neptune been aground or struck the rocks? (Ob. to.)

She had not shortly before.

How long before?

She had made one and a half voyages since she had touched the bottom.

When and where did she touch the bottom?

She struck on Hallett's Point rock about 4 or 5 days before the collision.

Did the Neptune leak after she left the wharf on the 14th.

She did leak; she leaked more or less ever since I knew her. There are few vessels that do not leak.

Did she leak more at this time than she did before touching on the rocks at Hallett's Cove?

Not to my knowledge.

Had the pumps been used to free her on that day?

They had; they told me so before leaving New York, and afterwards also, and is always customary in a steamboat when running. I was told the pumps kept her free very easily, and after the collision also.

Is it usual on board of steamboats to keep the pumps going continually?

It has been usual on all boats that I have been on board of to keep one pump going continually, to keep the boat free.

After the collision, had the Neptune any and how much water in her hold?

She had very little, some inches of water, but not a foot.

Was she as tight as steamboats ordinarily and usually are?

I cannot answer; I have known some steamboats leak a great deal more and some a great deal less.

When you examined the steamboat did you see any injury to her?

I saw where the schooner struck her in the stem; the stem was a little canted towards the larboard side, the copper round the stem also a little started, as near as I could tell by the light of the lamp. The blow appeared to be about the centre of the stem, near the water's edge. The stem was neither badly bruised or badly cut. The blow appeared to have struck on the starboard side.

When you first saw the vessels together, had the steamboat cut into the schooner or not?

I could not say whether the steamboat had cut the schooner or not; I could not see from where I was.

Was or was not the steamboat wedged into the schooner?

I cannot tell, as I could not see. A new stem was not put up on the steamboat afterwards.

Were any and what repairs put upon the stem?

None of any moment, except caulking the stem. After the collision I could see land on the Connecticut shore, but not on the Long Island shore. In an easterly and southeasterly direction it was very dark that way.

Could any part of the Long Island shore be seen at the time of the collision?

I do not know; I was not looking in that direction.

At the time of the collision, how did the light ship bear?

East by north, from one to two miles distant. The collision took place about midway between the Long Island and Connecticut shore; we might have been a little nearer the Long Island shore. The usual course of the steamboat, where the collision took place, going down the Sound, is east by north.

If the usual course is east by north, do you know how the steamboat at the time of the collision happened to head northeast?

I do not know of my own knowledge, but the steamboat must have put her helm down starboard. Childs belonged to the watch on deck between 8 and 12, and Harris belonged to the watch below; a man by the name of Driver, a wheelsman, was at the wheel at the time of the collision; he was the old wheelsman, and had been for many years. At the time of the collision the blow or shock was not severe to the steamboat. I have known many harder; it was what I call a slight one. The collision took place at about 9 40.

Did you hear any hail about the time of the collision?

I heard a great noise, but could not make out what it was.

On board of what boats have you been since the collision?

The Oregon, the Mutual Safety, and the Jacob Bell.

Have you been employed on any boat since the collision?

Yes; the Jacob Bell for three months as captain and pilot. I have been employed on board the Oregon by the month, since the collision, for some days and nights; left the Oregon in July. Has not been employed in any other vessel by the month, except the Jacob Bell and Oregon.

When you saw the schooner, was her jib to windward?

I think not; it was neither to the leeward or windward; I could not tell whether it was to windward or leeward; the night was quite dark. Don't know whether it was full or shaking.

On which side was the schooner's boom?

The boom and mainsail both on the lee side—the mainsail full. The mainsail looked to be pretty close hauled; the sheet might have been started some.

If it was so dark that you could not see the jib, how did you manage to see the lumber on deck?

I don't think it was so dark that I could not see the jib; the lumber was a great deal nearer to me. At the time of the collision I could see the Stratford Point light from 6 to 8 miles off. They bore eastward of northeast; our head was just westward of the light.

You have stated in your direct examination that there would have been no difficulty, if the schooner saw the steamboat two or more miles off, and the steamboat had kept her course, for the schooner to have avoided the steamboat. State what ought to have been done by the schooner to have avoided the collision.

If the schooner had seen the steamboat was going to the northward of her, to have let her went to the northward; and if she saw that she was going to the southward of her, to have let her went on that side. There was no trouble, such a night as that, if they had seen the light, in clearing the steamboat.

Have you any other answer to make to the last question?

If they found that the steamboat was coming close upon them, was to have shown a light of some kind by all means, if it was only a brand of fire; it is customary on Long Island Sound to do that. She might perhaps have made more noise than she did; she might also have fired guns, if she had them; she could have went about and stood back; she might have gone in stays or bore away; a vessel that would not have gone in stays, you might wear her. There is nothing else, that I think of, that the schooner could have done to have avoided the collision.

Did the collision wake you?

I was awoke by the noise before the collision, I was partly out of my berth as the vessels came together.

How does Crane Neck bear from Stratford light?

Crane Neck bears south southwest from Stratford Point light.

How does the Old Field light bear from Stratford light on the Connecticut river?

About south by west. I did not notice how far you could see a vessel in the west.

On further direct, was the steamboat Oregon under the directions of the same agents as the Neptune?

She was.

Do you know when the Neptune was sold?

On the 14th of August last. I remained in the employment of the same owners until she was sold.

Had you your full complement of officers and men on board the Neptune at the time of the collison?

Yes. T. J. DAVIS.

Read to and subscribed by the witness, Thomas J. Davis, on his examination before me.

GEO. W. MORTON, *U. S. Comm'r.*

December 3, 1846.

District court of the United States,
For the southern district of New York.

The Steamboat Neptune, her tackle, &c., }
adsum }
Zebulon A. Paine et al. }

Notice.

Please to take notice, that Thomas J. Davis will be examined (de bene esse) on the part of the claimants in the above entitled cause before me, (a commissioner duly appointed by the circuit court of the United States, for the southern district of New York, under and by virtue of the acts of Congress in such case made and provided,) at his house, 95 Columbia street, in the city of New York, on the second day of December, at four o'clock in the afternoon of that day; at which time and place you are hereby notified to be present, and put interrogatories if you shall think fit.

Dated New York, the first day of December, A. D. 1846.

Yours, &c., GEO. W. MORTON, *U. S. Comm'r, &c.*

To. E. H. Owen, *Pr. for lib.*

Due service of the within notice admitted.
New York, Dec. 1, 1846. E. H. OWEN,
Libellants' proctor.

United States of America,
Southern district of New York, ss.

I, George W. Morton, a commissioner, duly appointed by the circuit court of the United States, for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20, 1812, and the act of Congress, entitled "An act, in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act, entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, the witness material and necessary in the cause in the caption of the said deposition named, and that he is now confined by sickness to his bed, and unable to leave the house.

I further certify, that a notification of the time and place of taking the said deposition, signed by me, was made out and served on the proctor for the libellants to be present at the taking of the deposition, and to put interrogatories if he or they might think fit. A copy of which notice, with an admission of due service thereof by the proctor for the libellant.

I further certify, that on the second day of December, in the year of our Lord one thousand eight hundred and forty-six, I was attended by the proctors for the libellant and claimants, and by the witness, who was of sound mind and lawful age, and the witness was by me carefully

examined, and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing, in the presence of the witness; and from his statements, and after carefully reading the same to the witness, subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of delivering the same with my own hand to the court for which the same was taken.

And I do further certify, that I am not of counsel or attorney for either of the parties in the said deposition and caption named, or in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand and seal, this second day of December, in the year of our Lord one thousand eight hundred and forty-six, and of the independence of the United States the seventy-first.

GEO. W. MORTON,
U. S. Commissioner, duly appointed by the circuit court of the U. S., for the southern district of New York, in the second circuit.

February 4, 1847.

ZEBULON A. PAINE et al.
vs.
THE STEAMBOAT NEPTUNE, her tackle, &c. } 16.

This cause having been called in its order on the calendar for argument—

Mr. Cutting opens the argument for the libellant.
Mr. Woodruff argues for the claimants.
Mr. Woodruff concludes his argument for the claimants.
Mr. Wood argues for the claimant.
Mr. Wood concludes his argument for the claimant.
Mr. F. B. Cutting argues for the libellants.
Mr. Cutting concludes his argument for the libellants.
Curia adv. vult.

At a stated term of the district court of the United States of America, for the southern district of New York, held at the City Hall in the city of New York, on Saturday, the 27th day of February, in the year of our Lord one thousand eight hundred and forty-seven.

Present, the honorable Samuel R. Betts, district judge.

ZEBULON A. PAINE and others
vs.
The STEAMBOAT NEPTUNE.

This case having been heard upon the pleadings and proofs, and arguments of the respective advocates thereon, and due deliberation being had in the premises:

And it being made to appear to the court that the collision in the

pleading mentioned occurred in the night time, on the Sound, the schooner (Iole) being struck near midships on her larbord side by the bow of the Neptune, and so broken through as to sink immediately in consequence thereof:

And it being made further to appear to the court that the wind being about north the schooner was steering west by the compass, nearly close hauled upon the wind, and that the Neptune was steering E. by N. when the two vessels were found approaching, and that the schooner continued holding her course, whilst the Neptune was veered up to about N. E. with intent to pass the sch'r to windward of her, and that this change in the direction of the steamer was made when the vessels were from a quarter to ⅞ths of a mile apart, and were approaching each other with a combined speed of 16 or 17 miles the hour:

And it being further made to appear to the court, by a preponderance of evidence in the case, that the night was not so dark but that the vessels could discover each other on the Sound, at the place of collision, in either direction, a sufficient distance apart to enable them to avoid coming in collision without having lights exhibited on board them for that purpose:

And it being further made to appear to the court, by a preponderance of evidence, that the Steamboat Neptune, when she changed her course to the N. E. was to the leeward of the course the schooner was then running, and that the course of schooner was not changed by those having the management of her:

And it not being made to appear to the court, that any look-out was stationed on the deck or forward part of the steamboat, or elsewhere than in the pilot-house, and with a window intervening:

It is considered by the court, that the collision in the pleadings mentioned was not produced or occasioned by any fault or want of due skill and precaution in sailing and managing the schooner at the time.

It is further considered by the court, that the steamer was in fault at the time, in not having a sufficient and careful look-out kept upon the forward part of the deck, and more especially in maintaining, at such time, her full speed, if, as is set up by the answer and proofs in her behalf, the atmosphere was so cloudy and thick ahead of her, and in the direction she was running, that a vessel not carrying lights could not be seen beyond a few rods from her.

It is further considered by the court, that the persons navigating the said steamboat were, at the time, chargeable with neglect and want of due precaution in attempting to cross the bows of the schooner and go to windward of her, and that such improper movement of the steamer was the occasion of the collision and damage which ensued.

Wherefore, it is ordered and adjudged by the court, that the libellants recover their damages sustained by occasion of such collision, and that the said steamboat be condemned therefor, with costs to be taxed.

It is further ordered, that it be referred to a commissioner to ascertain and report the amount of damages sustained by the libellants by means of the premises, and that each party have leave, on such refer-

ence; to use the evidence offered in court on the hearing of the cause, and such other evidence as may be competent and relevant.

U. S. DISTRICT COURT:

ZEBULON A. PAINE and others
vs.
THE STEAMBOAT NEPTUNE, her tackle, &c.

Testimony on reference. March 5, 1847.

John Field being sworn, says, that he is at present a ship-broker, and has been so for the last two years, and for eleven years previous has been a shipmaster; that he is acquainted with Z. A. Paine, the owner, and was well acquainted with the schooner Iole; Mr. Paine was owner of the Iole. Witness saw the Iole during the time she was building; she was built at Eastport, in Maine, about nine years ago, and witness was acquainted with her until she was lost. I do not think she was ever here for the last two years without my being on board of her. Witness is acquainted with value of vessels of her description and class. The fair value of the Iole at the time she was lost was twenty-five hundred dollars; she was a very excellent vessel; she had never before met with any accident; she was a well-built vessel, and was so fine a vessel that she had the preference of freight over much newer vessels; she was built for the owners, and great pains and care was taken in her building; her timber was docked and well seasoned previous to its being put in her; her original cost was about $4,500, to the best of my judgment; during all the time she was running, she was kept in the best of order. At the time the Iole was lost Mr. Z. A. Paine was half-owner and Mrs. Norwood was the other owner.

Mr. L. B. Woodruff objects to the libellants proceeding on the reference, and taking testimony therein, on the ground that a notice of appeal has been filed with the clerk.

On his cross examination by Mr. Woodruff, he says the Iole was about ninety tons. The last time he saw her was the last of May or beginning of June, 1846. JOHN FIELD.

Benjamin C. Arrowsmith, sworn, says he is a merchant, and is acquainted with the value of vessels; he has been constantly employed in the shipping business for the last fourteen or fifteen years, and in that way became acquainted with the value of vessels; he has known the Iole since she was a new vessel. I should consider her a cheap vessel in July last at twenty-five hundred dollars. From the condition she was in, and my knowledge of her, I should have been willing to have paid that money for her.

I have had experience of the value of vessels of her class and description from having been employed in a commission house for the last fourteen years, to which house this vessel has been consigned a number of times.

In shipping goods on board this vessel, the goods were insured at the lowest rates. On his cross examination by Mr. Woodruff, he says the

cost of building vessels of her class, in Maine, is about five thousand dollars; she was considered a first class eastern vessel; she was less than a hundred tons—from 80 to 100 tons.

B. E. ARROWSMITH.

Nathaniel Dewey, sworn. That he is a wharfinger; has been so for the last five years next May; his business to collect wharfage. I knew the schooner Iole, of Eastport, and have known her since she commenced running; before I was a wharfinger, I had a ship-chandler's store on the wharf, near where she came to; she left New York, for Eastport, on her last voyage on the 24th of June, 1846; she was in excellent order and condition; she was one of the best vessels of her class; she was considered a very fast sailer; she was considered the fastest vessel of any of the craft that sailed to that part of the country.

NATHL. DEWEY.

Life Smith being sworn, says, that his firm was consignee of thirty-six barrels of pickled codfish. (A bill of lading is produced, marked exhibit A, G. W. M.) The thirty-six barrels of fish belonged to, and were shipped by, John Bucknam, of Eastport, Maine; the value of that fish in New York in July, 1846, was three dollars per barrel.

Look at the articles stated on this list, marked exhibit B, and state their value in the port of New York in July, 1846?

The above 36 and 39 barrels—total, 75 barrels of codfish, at three dollars per barrel, amount to	$225 00
200,000 laths, worth $1 50 per 1,000	300 00
6,625 pickets, do. $6¼ per 1,000	41 40
35 tons of plaster, the price of which varies from $2 to $2 50 per ton	70 00
	$636 40

The empty beer barrels I am unable to state their value.

Neither myself or any of my firm had any interest in any of the above articles.

The freight to be paid on the 36 barrels of codfish was 25 cents per barrel.

I was familiar with the rates of freight paid from New York to Eastport at that time. I have been engaged in that trade twenty-one years next month, receiving goods and paying freight.

The fair rate of freight for thirty-six barrels of fish was 25 cents per barrel	$9 00
200,000 laths, 40 per 1,000	80 00
6,625 pickets, at $2 per 1,000	13 24
35 tons plaster, at $1 50 per ton	52 50
39 barrels codfish, at 25	9 75
33 beer barrels, at 25	8 25
	$172 74

The above are fair rates for freight from Eastport to New York.

On his cross examination he says he cannot state that any of the property above described was on board; he only knows, from the bill of lading and the letter, that the 36 barrels were on board; does not know the quality of the fish; pickled codfish, of that quality, are all of one price, unless they are spoiled. There is a difference in the quality of plaster, laths, and pickets; he has put them down at the lowest price. Pine pickets are worth two dollars more.

L. SMITH.

Adjourned until 11 a. m., on Tuesday next.

Tuesday, March 9th, 1847.

John Havy being sworn, says, that he is a clerk in the employ of Messrs. W. B. & A. Miles, of New York, brewers. They were in the habit of dealing with Andrew Bradford, of Eastport, Maine. We received advices from Mr. Bradford, of Eastport, that he had shipped on board the Iole, on her trip when she came in collision with the Neptune, thirty empty beer barrels and two barrels containing beer.

The barrels had been sent by the Messrs. Miles with beer to Mr. Bradford. The barrels were worth two dollars. The beer in the two barrels, if the barrels were full, would have been worth five dollars each, in addition to the price of the barrels.

(Signed) JOHN HARVEY.

Adjourned until 11 a. m., to-morrow.

Wednesday, March 10th, 1847, adjourned until Saturday, the 13th inst., at eleven, a. m. G. W. M.

Saturday, March 13th, the proctors appear; and, on motion of the claimants, the examination is adjourned until Monday, the 15th inst.

G. W. M.

Monday, March 15, 1847, the counsel for the respective parties appear; and the further examination is adjourned until 10 a. m., Wednesday next. G. W. M.

Wednesday, March 17, 1847, Alfred Hanabergh being sworn, says that he resides at Brooklyn, and does business at 62, Fulton street; a tailor by profession; knows Augustus Norton; sold him a bill of clothing in April and May, 1846.

Witness produces books; Norton paid the amount; the bill is marked Exhibit, G. W. M., March 17, '47. The prices were reasonable; they were the cash prices, and they sold them for cash and received cash for them.

ALFRED HANABERGH.

John Norton, jr., sworn, says he is a brother of Augustus Norton; resides at Brooklyn, and does business in the city.

He went with his brother, Augustus Norton, when he purchased the bill of goods testified to by the witness. About a week after the purchase last made, he left New York for Eastport, Maine. The articles he purchased from Mr. Hannaberg he packed up at my house and took with him. He also purchased from Mr. Bird, in Nassau street, while I *were* with him a hat for $4.50, which he also took with him. This was a dress hat. He also bought two caps, one of which he paid $2 for, and the other was worth about $1.50. I was with him when he purchased the trunk and gave six dollars for it. The chest of clothes which was picked up in the Sound the day after the loss of the Isle, belonging to my brother, was taken to my house and there opened. It was filled with clothes belonging to my brother. He had a good many books in it, one of which cost $4; also a lot of tobacco—12 or 15 pounds.

The damage to the contents of the trunk was thirty dollars. When my brother came here, he had been fitted out at home to go a long voyage. There was a quilt and blanket on board, as I understood he was bringing on for me.

On his cross examination, he says he cannot state the contents of the chest from memory, further than he has stated. There were sailors' clothes, shirts, books, and other articles—some pantaloons! What I recollect was, that they were all good clothes—round jackets. Don't recollect of any coats or stockings, but thinks there must have been. Don't know whether there were any drawers. Thinks there were flannel shirts—to the best of my recollection. I think there were the articles which I have stated. I do not know of *there* being in the chest. The clothing was considerably stained and completely saturated by the tobacco juice. I do not know that I saw the things after they were washed and dried.

On further direct, the chest was entirely different from the trunk I have spoken of. JOHN NORTON, JR.

Adjourned until Friday, 19th, at 10 a. m.

Friday, March 19th, 1847. The parties appear, and the claimants proceed with their testimony.

Testimony for the claimants.

William H. Brown, sworn, says that he is forty-three years of age, resides in the city of New York, and is a ship-builder by profession; has followed that occupation about 18 years; some seasons I have had six vessels on the stocks during the season, at others less, and some seasons . Is a judge of the costs of building vessels of all descriptions; has had some considerable experience in repairing vessels; have occupied the railway, for the purpose of repairing vessels; I am somewhat acquainted with the value of eastern built vessels from hearing the prices at which it cost to build, and the prices at which they were built. I have never seen them in the progress of building. Ves-

sels built at Eastport, Maine, when new and ready for sea, cost from thirty to forty and forty-five dollars per ton. We consider a keel vessel costing less than a centre board. It would depend mainly, as to her value when built, of what materials she was constructed. The very best built vessel would not, I think, exceed $45 per ton.

The depreciation of New York vessels in nine years, if kept in good condition, would be 50 per cent; and I should think [that of] vessels built there would be greater. I have no recollection of ever seeing an eastern vessel of that age opened, to ascertain her situation. As far as I have ever been able to ascertain from repairing eastern vessels, I should judge their depreciation to be greater than [that of] New York built vessels. I believe that eastern vessels, generally speaking, do not stand as high as New York vessels. Boston vessels are considered better than Maine vessels, although very fine vessels are built in Maine.

On his cross examination, has never seen the schooner Iole to his knowledge; has no means of estimating her value at the time of her loss, or at any other time.

Vessels built at Eastport, Maine, differ very materially in their value, which is not dependent on their tonnage, but upon the manner and materials of which they are built.

The frame of vessels of nine years of age may be very good, but the plank at that age is usually decayed or worn out more or less. The costs of sails, rigging, &c., of a fore and aft schooner, of 70 or 80 tons, would be twenty-five per cent. of her costs. I have built smaller and larger vessels, but none of that size that I now recollect; but can judge pretty well of the costs of rigging from those I have built. A fore and aft vessel does not cost as much as a square-rigged vessel, except as to anchors.

The testimony of Jona. Field being read to the witness, he says, from the description, he should suppose that a vessel of that description could be built at from 40 to 45 [dollars] per ton. I speak of the value from what I have understood was the price of vessels built in Maine.

On further direct, in the estimate of thirty to 45 [dollars] per ton, I included the sails, rigging, &c. If that vessel had never had any new added to her while running for 9 years, I should be unwilling to give over 35 to 40 per cent. of her first costs, and she might be a dear vessel at that—would be as much as she was worth.

On further cross examination, witness has never built or owned any of those eastern vessels. I speak of the rapid depreciation of timber in vessels generally.

W. H. BROWN.

Adjourned until 11 a. m., Monday morning, the 22d.

Monday, March 22d, 1847. The parties appear, pursuant to adjournment.

Augustus Norton, sworn—a witness produced by the libellants to prove the contents of a trunk and chest, alleged to have been on board

the Iole at the time she was lost, belonging to the libellant. The fact of the trunk and chest being on board and the value of the contents to be proved by witnesses other than the deponent.

The testimony objected to by the claimant.

Augustus Norton, one of the libellants, [having] been sworn, and the testimony taken subject to exceptions, says, that *that* the contents of his trunk, alleged to have been lost on board the Iole at the time she was lost, consisted of one new overcoat, an entire suit of fine class clothes, part of a suit of common clothes, part of which were in his berth; a pair of white linen pantaloons, eight shirts, linen bosoms and collars, four or six flannel shirts, the same of drawers, 4 or 6 pair; I know of 1 doz. pairs of fine cotton stockings; three vests, besides the two suits of clothes; half a dozen pairs of gloves, kid and silk; three linen and three silk pocket handkerchiefs; two silk and one satin cravat; one gold ring; there were ten dollars in money; one cap—the best one. The two others were in the berth. None of the articles which I have mentioned were in the chest which was recovered.

AUGUSTUS NORTON.

Adjourned until 10 a. m., on Wednesday next, the 24th inst.

Wednesday, March 24. Parties appear, and adjourn until ½ past ten, on Friday next, March 26.

Friday, March 26th. The parties appear, and the examination is adjourned until the 31st inst.

Adjourn until ½ past ten, on Friday next, March 26.

Friday, March 26th. The parties appear, and the examination is adjourned, until the 31st inst., at eleven, a. m.

March 31, 1847. The parties appear; the proctor for the libellant offers in evidence the depositions of Eliza Norton, Judith Anna Webster, and George Norton, and Dan'l T. Granger. Adjourned by consent to the 14th inst. at 11.

UNITED STATES OF AMERICA,
District of Maine, county and State of Maine, ss.

Be it remembered, that on this twentieth day of March, in the year of our Lord one thousand eight hundred and forty-seven, I, A. Hayden, a commissioner duly appointed by the circuit court of the United States, for the district of Maine, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States, passed February 20th, 1812, and the act of Congress, entitled "An act in addition to 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at Eastport, in the State of Maine, in the said district of Maine, in the State aforesaid, Eliza Norton, Judith Anne Webster, [and] Geo. Norton, to testify

and the truth to say, on the part and behalf of the libellants, in a certain suit or matter of controversy, now depending and undetermined, in the district court of the United States, for the southern district of New York, at the city of New York, wherein Zebulon A. Paine and others are libellants, and the Steamboat Neptune, her tackle, &c., and George Law, claimant; and the said Eliza Norton, being about the age of fifty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Eliza Norton; and she did thereupon depose, and testify, and say as follows, viz: That Augustus Norton, the owner of the articles referred to in the annexed schedule marked A, is my son. I attended to the packing of his trunk, when he left Eastport, in July last, to go to New York in the schooner Iole. I know that his trunk, when he left Eastport, contained all the articles enumerated in said schedule, and some others not there enumerated. The clothing was mostly all new, and of good quality—indeed, they were all new, as he had been away previously a two-years' voyage, and on his return had got entirely new clothing. I am not able to give an opinion of the value of the articles, as I did not purchase them. I know they were all good quality. As far as I can judge, I should say that the values annexed to the articles in the schedule are fair and true values of said articles. The article named in the schedule as "packages in charge" was handed me by Augustus, as belonging to Miss Judith Anna Webster, and I put it in the trunk.

ELIZA NORTON.

Sworn and subscribed, March 20th, 1847, before me.

A. HAYDEN, *U. S. Com'r.*

A.

[Annexed to deposition of Eliza Webster.

A. HAYDEN, *Commissioner.*]

List of articles belonging to Augustus Norton, which were on board of the Iole, and lost with her at the time she was sunk by the Steamboat Neptune, referred to in the annexed deposition.

1 new overcoat - - - -	$18 00
1 " dress " - - - -	22 00
1 " sack " - - - -	6 00
3 prs. pants (2 prs. new) - - -	17 00
3 vests - - - - -	11 00
1 hat and box - - - -	4 50
3 caps - - - - -	5 50
8 shirts, at $2 - - - -	16 00
6 flannel do. - - - - -	9 00
5 prs. do. drawers - - - -	10 00

12 pairs stockings - - - -	$3 00
Sundries in trunk - - - -	20 00
Trunk, new - - - -	6 00
Packages in charge - - -	15 00
1 quilt and blanket - - - -	10 00
1 quadrant - - - -	25 00
Damage to chest of clothes, books, &c. -	30 00
1 pr. boots, new - - - -	4 00
	$232 00

And the said Judith Anna Webster, being about the age of twenty-six years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Judith Anna Webster, and she did thereupon depose, testify, and say as follows, viz: When Mr. Augustus Norton was about leaving Eastport, for New York, in the schooner Iole, in July last, I gave him in charge a package containing several articles. There was in the package thirteen dollars in money; one gentleman's smoking cap, worth two dollars and fifty cents; one linen shirt, worth five dollars. The money and these articles I put up in one package, and delivered them to the said Augustus Norton, to carry to New York.

JUDITH ANNA WEBSTER.

Sworn and subscribed, March 20, 1847, before me.

A. HAYDEN, *U. S. Commissioner.*

And the said George Norton, being about the age of twenty-eight years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said George Norton, and he did thereupon depose, testify, and say as follows, viz: I am a brother of Augustus Norton, the owner of the articles mentioned in the schedule shown me, and to be annexed to the deposition of Eliza Norton, marked A. I saw the articles of clothing mentioned in said schedule, and most of the other articles just before they were packed, and know that the said Augustus had them at about the time he left Eastport for New York, in the schooner Iole, in July last. I knew that he intended to take them with him, and suppose he did so. I think that the value set against the several articles in said schedule is the fair and just value of the several articles. They were all of good quality, and new.

I do not know the value of the quadrant mentioned. I believe it was nearly new, and had only been used one voyage.

GEO. NORTON.

Sworn and subscribed, March 20, 1847, before me.

A. HAYDEN, *U. S. Commissioner.*

District court of the United States, for the southern district of New York.

ZEBULON A. PAINE et al.
vs.
The Steamboat NEPTUNE, her tackle, &c., George Law, claimant.

STATE OF MAINE, *county of Washington.*

Daniel T. Granger, of said State and county, being duly sworn, says, that he is informed, and verily believes, that the claimant in the above entitled suit, and his proctor and counsel, severally reside in the southern district of New York, in the State of New York, and more than one hundred miles from Eastport, and that neither the said claimant, his counsel, proctor, or agent, is at present within one hundred miles of this place, to the knowledge or belief of this deponent.

DANIEL T. GRANGER.

Sworn before me, this 20th day of March, 1847.

AARON HAYDEN,
U. S. Com'r, district of Maine.

UNITED STATES OF AMERICA, *district of Maine, ss.*

I, Aaron Hayden, a commissioner, duly appointed by the circuit court of the United States for the district of Maine, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act in addition to an act entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act, entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, the witnesses are material and necessary in the cause in the caption of the said deposition named, and that they live at Eastport, which is more than one hundred miles from the city of New York, the place of trial of the within entitled cause.

I further certify, that no notification of the time and place of taking the said deposition, signed by me, was made out and served on the adverse party, his attorney or agent, to be present at the taking of the deposition, and to put interrogatories, if he or they might think fit, because neither the adverse party, his attorney, proctor or agent, is within one hundred miles of Eastport, Maine, the place of caption or taking of the said depositions.

I further certify, that on the twentieth day of March, A. D. 1847, I was attended by the agent of the counsel for the libellant, and by the witnesses, who are of sound mind and lawful age, and the witnesses

were by me carefully examined and cautioned and sworn to testify the whole truth, and the depositions were by me reduced to writing in the presence of the witnesses, and from their statement, and after carefully reading the same to the witnesses, they subscribed the same in my presence. I have retained the said depositions in my possession for the purpose of sealing up, directing, and placing the same in the post-office at Eastport with my own hand, for the court for which the same were taken.

And I do further certify, that I am not of counsel or attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in the caption.

In testimony whereof I have hereunto set my hand and seal, this twentieth day of March, in the year of our Lord one thousand eight hundred and forty-seven, and of the independence of the United States the seventy-first.

[L. S.] AARON HAYDEN,
U. S. Commissioner, duly appointed by the circuit court of the U. S., for the district of Maine.

April 14th. Adjourned until 21st inst., at 10, a. m.

April 21st. The parties appear. The libellants offer the depositions of E. S. Paine, George Norton, and Matthew Mitchell, taken before Aaron Hayden, U. S. Com'r.

Adjourned until April 28th, at 11, a. m.

United States district court.

ZEBULON A. PAINE and others
vs.
THE STEAMBOAT NEPTUNE, her tackle, &c.
George Law, claimant.

STATE OF MAINE, *county of Washington, ss.*

Daniel T. Granger, of said State and county, being duly sworn, says, that he is informed, and verily believes, that the claimant in the above entitled suit, and his proctor and counsel, severally reside in the southern district of New York, in the State of New York, and more than one hundred miles from Eastport, and that neither the said claimant, his counsel, proctor or agent, is at present within one hundred miles of this place, to the knowledge or belief of this deponent.

DANIEL T. GRANGER.

Sworn before me, this 14th day of April, 1847.

AARON HAYDEN,
U. S. Commissioner.

UNITED STATES OF AMERICA,
District of Maine, State of Maine, ss.

Be it remembered, that on this fourteenth day of April, in the year of our Lord one thousand eight hundred and forty-seven, I, Aaron Hay-

den, a commissioner, duly appointed by the circuit court of the United States, for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States,'" passed March 1st, 1817, and the act, entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office at Eastport, in the State of Maine, in the city of New York, in the said southern district of New York, in the said State aforesaid, Edward S. Paine, George Norton, and Matthew Mitchell, to testify and the truth to say, on the part and behalf of the libellants in a certain suit or matter of controversy, now depending and undetermined, in the district court of the United States, for the southern district of New York, at the city of New York, wherein Zebulon A. Paine and others are libellants, and the Steamboat Neptune, her tackle, &c., and George Law, claimant.

And the said Edward S. Paine being about the age of twenty-two years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Edward S. Paine, and he did thereupon depose, testify, and say as follows, viz:

That he is a son of Zebulon A. Paine, one of the libellants; that he was in his father's employ in the summer of eighteen hundred and forty-six. That in July, of that year, he superintended the loading of the schooner Iole, for New York, on the trip on which she was lost. There were on board of her on his father's account, on that voyage, two hundred thousand laths, four thousand nine hundred and fifty-four foot clear pine pickets, and seventeen hundred and twenty-five four-feet spruce pickets, thirty-five tons plaster of Windsor, plaster of Paris, twenty barrels pickled codfish, which were consigned to Sturges & Co., New York. There were also nineteen barrels pickled codfish, eight barrels scale pickled fish, which were consigned to the captain, (Joseph Sumner.) The amount of the stores put on board was thirty-eight dollars. There were on board, also, thirty empty beer barrels belonging to Andrew R. Bradford; there was one barrel, and he is not certain but there were two barrels, belonging to said Bradford, partly filled with beer. There were thirty-six barrels of pickled codfish belonging to John Bucknam. This deponent knows of his own knowledge that all the articles above enumerated were on board the Iole when she sailed from Eastport for New York, on the voyage in which she was lost.

EDWARD S. PAINE.

Subscribed and sworn the 14th April, 1847, before me.

A. HAYDEN, *Com'r.*

And the said George Norton, being about the age of twenty-eight years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said George Norton, and he did depose, testify, and say, as follows, viz:

That he has before given a deposition in this cause. That the chest and trunk containing the articles testified about in his former deposition, as belonging to his brother, Augustus Norton, with the other articles referred to by this deponent in his said former deposition, this deponent saw put on board the schooner Iole, for New York, on the voyage in which she was lost, and he remained on the wharf and saw said schooner Iole sail with all said articles on board of her.

GEO. NORTON.

Subscribed and sworn, the 14th April, 1847.

A. HAYDEN, *Comm'r.*

And the said Matthew Mitchell, being about the age of forty-five years, and having been by me first cautioned and sworn to testify the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Matthew Mitchell, and he did thereupon depose, testify, and say as follows, viz: In July, A. D. 1846, I trucked from Andrew R. Bradford's to the schooner Iole two ullage beer barrels, partly full. I saw them put on board said schooner. From handling them, I should judge they were half full, or perhaps two-thirds full.

MATTHEW MITCHELL.

Subscribed and sworn the 14th April, 1847.

A. HAYDEN, *Comm'r.*

UNITED STATES OF AMERICA, *district of Maine, ss.*

I, Aaron Hayden, a commissioner, duly appointed by the circuit court of the United States, for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, the witnesses are material and necessary in the cause in the caption of the said deposition named, and that they live at Eastport, more than one hundred miles from the city of New York, the place of the trial of the within entitled cause.

I further certify, that no notification of the time and place of taking

the said deposition signed by me was made out or signed on the adverse party, his attorney or agent, to be present at the taking of the deposition, and to put interrogatories if he or they might think fit, because neither the adverse party, his attorney or agent, are within 100 miles of Eastport, in the State of Maine, the place of caption or taking of said deposition.

I further certify, that on the fourteenth day of April, A. D. 1847, I was attended by the counsel for the libellant, and by the witnesses, who are of sound mind and lawful age, and the witness[es] were by me carefully examined, and cautioned, and sworn to testify the whole truth, and the depositions were by me reduced to writing, in the presence of the witnesses, and from their statement; and, after carefully reading the same to the witnesses, they subscribed the same in my presence. I have retained the said depositions in my possession, for the purpose of sealing up, directing, and placing in the post office at Eastport the same, with my own hand, for the court for which the same were taken.

And I do further certify, that I am not of counsel or attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in the caption.

In testimony whereof I have hereunto set my hand and seal, this fourteenth day of April, in the year of our Lord one thousand eight hundred and forty-seven, and of the independence of the United States the seventy-first.

AARON HAYDEN,
U. S. Commissioner, duly appointed by the circuit court of the U. S., for the district of Maine.

Wednesday, April 28th, 1847.

The proctors for the libellants and claimants appear, and neither party having any further testimony to offer, the testimony is closed.

G. W. M., *U. S. Com'r.*

Eastport, July 6, 1846.

Received in good order from John Bucknam, on board the schooner Iole, thirty-six barrels pickled codfish, to be delivered to Messrs. Smith & Boynton, New York, dangers of the seas only excepted, at twenty-five cents per barrel freight. JOSEPH SUMNER.

J. B.; 36 barrels, exhibit A. G. W. M.
March 5, 1847.

Augustus Norton, bought of A. Hanabergh & Co.:

1846.		
April 16,	1 black coat	$22 00
"	1 pr. do. doe skin pants	8 50
"	1 satin vest	5 00
"	1 plain silk	4 00
17,	2 handk'fs, a 6s.	1 50
"	1 cravat	1 50

April 17,	1 pr. gloves	$0 38
"	1 " suspenders	50
"	1 " black cass. pants	5 00
18,	1 sack coat	6 00
"	2 shirts, at 12s.	3 00
"	1 pr. gloves	1 00
May 5,	1 sack overcoat	18 00
"	1 umbrella	1 38
"	1 box cigars	5 00
		$82 76

G. W. M. March 17, 1847.

U. S. DISTRICT COURT.

ZEBULON A. PAINE and others, libellants,
vs.
The STEAMBOAT NEPTUNE, her tackle, &c.

Commissioner's report.

In pursuance of a decretal order made in the above entitled cause, by which, among other things, it was referred to the undersigned, one of the commissioners of this court, to ascertain and report the amount of damages sustained by the libellants by means of the collision in the pleadings mentioned:

I, George W. Morton, the commissioner to whom the above matter was referred, do report, that I have been attended by the proctors for the libellant and claimants, and have taken and examined the testimony offered by the respective parties, and do find that the damages sustained by the libellants, exclusive of interest, amounts to the sum of three thousand five hundred and forty-nine $\frac{22}{100}$ dollars, which sum is made up of the following items:

The value of the vessel at the time she was lost	$2,500 00
75 barrels of codfish, at $3 per barrel	225 00
200,000 laths, at $1 50 per 1,000	300 00
6,625 picketts, at $6 25 per 1,000	41 40
35 tons plaster, at $2 25 per ton	78 75
30 empty beer barrels, at $2 each	60 00
2 beer barrels partly full, at $2 each	4 00
Value of the stores on board	33 00
Freight on 75 barrels codfish, at 2s. per barrel	18 75
	$3,260 90
	$3,260 90
Freight on 200,000 laths at $\frac{1}{100}$ per 1,000	80 00
" 6,625 picketts, at $2.00 1,000	13 27
" 35 tons plaster, at $2 50 per ton	52 50
" 32 beer barrels, at 25	8 00
	$3,414 67

Articles on board belonging to Augustus Norton, estimating the quadrant at $16	$123 00
Cash in his trunk	10 00
	$3,547 67

$3,547 67
45 57

$3,593 24

Amounting in the whole, without interest, to three thousand five hundred and forty-seven $\frac{67}{100}$ dollars. All which is respectfully submitted.

GEO. W. MORTON,
U. S. Com'r.

April 30, 1847.

At a stated term of the district court of the United States of America, for the southern district of New York, held at the City Hall, in the city of New York, on Tuesday, the fourth day of May, in the year of our Lord one thousand eight hundred and forty-seven.

Present, the honorable Samuel R. Betts, district judge.

ZEBULON A. PAINE et al.
vs.
THE STEAMBOAT NEPTUNE, her tackle, &c.,
G. Law, claimant.

On reading and filing the commissioner's report made in the above entitled cause, by which the damages sustained by the libellants are reported at the sum of three thousand five hundred and forty-seven $\frac{67}{100}$ dollars:

On motion of Mr. E. H. Owen, proctor for the libellant, it is ordered, that the report be in all things confirmed, and that the libellants recover in this action against the said Steamboat Neptune, her tackle, &c., the amount reported, together with interest thereon, from the twenty-seventh day of February last, amounting in the whole to the sum of three thousand five hundred and ninety-three $\frac{24}{100}$ dollars, together with their costs to be taxed; and that the said steamboat, her tackle, &c., be condemned therefor.

And, on like motion, it is further ordered, that unless an appeal be taken to this decree within the time limited and prescribed by the rules of this court, that the stipulators for costs and value pay into court the amount of their stipulations, and that the clerk distribute the proceeds in satisfaction of this decree.

UNITED STATES DISTRICT COURT,
Southern district of New York.

In admiralty.

ZEBULON A. PAINE, &c.,
vs.
THE STEAMBOAT NEPTUNE, her tackle, &c.

The claimant appeals from the decree made and entered in this cause, bearing date the fourth day of May instant.

Yours, &c., WOODRUFF & GOODMAN,
New York, May 13, 1847. *For the Clerk.*
And E. H. OWEN, *Proctor for libellant.*

CIRCUIT COURT OF THE U. S. OF AMERICA,
For the southern district of New York, in the second circuit.

STEAMBOAT NEPTUNE, her tackle, and Edward B. St. John, claimant and appellant,
vs.
ZEBULON A. PAINE, Joseph Sumner, and others, libellants and appellees.

Bond for costs.

Know all men by these presents, that we, George Law and Alanson P. St. John, are held and firmly bound unto the above named Zebulon A. Paine and others, in the sum of four thousand five hundred dollars, to be paid to the said appellees; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the twentieth day of May, in the year of our Lord one thousand eight hundred .

Whereas the above named Edward B. St. John has prosecuted an appeal to the circuit court of the United States, for the southern district of New York, in the second [circuit,] to reverse the decree rendered in the above entitled suit, by the judge of the district court of the United States, for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above named appellant shall prosecute his appeal to effect, and answer all damages and costs, if he fail to make his appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

GEORGE LAW, [SEAL.]
A. P. ST. JOHN. [SEAL.]

Sealed and delivered, and taken and acknowledged, this 20th day of March, 1847, before me.

GEO. W. MORTON, *U. S. Comm'r.*

UNITED STATES OF AMERICA,
Southern district of New York, ss.

George Law and Alanson P. St. John being duly sworn, depose and say, and each for himself saith, that he is worth the sum of nine thousand dollars over and above all his just debts and liabilities.

GEORGE LAW,
A. P. ST. JOHN.

Sworn to, this twentieth day of March, A. D. 1847, before me.
GEO. W. MORTON, *U. S. Comm'r.*

CIRCUIT COURT OF THE UNITED STATES,
For the southern district of New York.

THE STEAMBOAT NEPTUNE, her tackle, &c., Edward B. St. John, claimant and appellant,
vs.
ZEBULON A. PAINE, Sarah Norwood, John Bucknam, Andrew Bradford, and Augustus Norton, libellants.

To the honorable the circuit court of the United States, for the southern district of New York.

The petition and appeal of the above named appellant sheweth, that on or about the twenty-eighth day of July, one thousand eight hundred and forty-six, the above named libellants, Zebulon A. Paine, Sarah Norwood, John Bucknam, Andrew Bradford, and Augustus Norton, filed their libel jointly in the district court of the United States, for the southern district of New York, against the Steamboat Neptune, her tackle, apparel, and furniture; and all persons intervening for their interest in the same, in a cause of collision, civil and maritime, in which said libel it is in substance alleged, among other things, that the Steamboat Neptune came into collision with the schooner Iole, of which the said libellants, Zebulon A. Paine and Sarah Norwood, were owners, through the negligent conduct of the persons in charge of the said steamboat, in the manner in which the same is set forth in said libel; and by the collision aforesaid, and consequent sinking of the said schooner with her cargo, belonging in part to the said libellant, Zebulon A. Paine; and in part to the libellant, John Bucknam; and in part to the libellant, Andrew Bradford; and with the personal effects of the libellant, Augustus Norton, who was a passenger on board of said schooner, the libellants, Zebulon A. Paine and Sarah Norwood, have sustained damage by the loss of the said vessel to the amount of three thousand dollars; the libellant, Zebulon A. Paine, by the loss of his part of the said cargo, to the amount of five hundred and fifty dollars; the libellant, John Bucknam, by the loss of his part of the cargo, to the amount of one hundred and seventeen dollars; the libellant, Andrew Bradford, by the loss of his part of said cargo, specified in said libel; and the libellant, Augustus Norton, by the loss of his personal property and ef-

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fects, specified in said libel; and praying, among other things, that the said district court would be pleased to pronounce for the damages aforesaid, and to decree such other relief to the libellants as should to law and justice appertain; also, to condemn the said steamboat, her tackle, apparel, and furniture, and all persons intervening for their interest therein in costs and expenses as by said libel will appear, to which, for the contents thereof, this appellant asks leave to refer for greater certainty.

That process was issued against said steamboat, and the said steamboat attached; and thereafter, on or about the 24th day of December, 1846, Edward B. St. John, the claimant aforesaid, having executed the necessary stipulations for costs and value, did file his claim and answer in said district court to the said libel, alleging and setting forth, among other things in substance, that the said collision arose through the fault or insufficiency of the persons in charge of the said schooner, without any fault of the persons in charge of said steamboat, and insisting that the said steamboat was not liable for the damages alleged by the libellants to have been sustained by them; and praying that the said district court would be pleased to pronounce against the said libel, and to condemn the libellants in costs, and otherwise right and justice to administer in the premises, as will more fully appear in reference to said answer, to which, for the contents thereof, this appellant asks leave to refer.

That a replication was filed to said answer, and the said cause thereafter came on to be tried and heard before the honorable Samuel R. Betts, judge of the said district court, on or about the sixth and eighth days of February, A. D. 1847, upon the allegations, testimony, and proofs adduced by the respective parties; and the said judge having advised thereon, on or about the 27th day of February, A. D. 1847, made a decretal order or sentence, that the libellants recover in the said action against the Steamboat Neptune, her tackle, &c., the damages sustained by occasion of the collision aforesaid, and that the said steamboat be condemned therefor, with costs to be taxed, and that it be referred to a commissioner of said court to ascertain and report the amount of the damages sustained by the libellants by means of the premises, as by reference to said decretal order may more fully appear.

Under which decretal order there was a reference had to George W. Morton, esq., a commissioner as aforesaid, who reported that the damages sustained by the libellants, exclusive of interest, amounted to the sum of three thousand five hundred and forty-seven dollars and sixty-seven cents, which sum was made up of the following items:

The value of the vessel at the time she was lost - -	$2,500 00
75 barrels of codfish, at $3 per barrel - -	225 00
200,000 laths, at $1 50 per 1000 - - -	300 00
6,625 pickets, at $6 25 per 1000 - - -	41 40
35 tons plaster, at $2 25 per ton - - -	78 75
30 empty beer barrels, at $2 each - - -	60 00
2 beer barrels, partly full, at $2 each - -	4 00
Value of the stores on board - - - -	33 60

Freight on 75 barrels codfish, at 2[5 cents] per barrel -		$18 75
Freight on 200,000 laths, at $\frac{40}{100}$ per 1000 - -		80 00
Freight on 6,625 pickets, at $2 per 1000 - -		13 27
Freight on 35 tons plaster, at $2 50 per ton -		52 50
Freight on 32 beer barrel, at 25 cents - -		8 00
		$3,414 67
Articles on board belonging to Augustus Norton - -		123 00
Estimating the quadrant at $16. To cash in trunk,	$10	10 00
		$3,547 76

That afterwards, on the fourth day of May, A. D. 1847, a final decree was pronounced by the said district court, by which it was among other things ordered, adjudged, and decreed by said court, that the report of the said commissioner be in all things confirmed, and that the libellants aforesaid recover in this action against the said Steamboat Neptune, her tackle, the amount reported, together with the interest thereon from the 27th day of February, A. D. 1847; and also, from the whole of the decree made and pronounced on the fourth day of May, A. D. 1847, to the next circuit court, to be held in the said district, and he prays that the said decree, with the documents and proceedings in said cause, may be sent to the said next circuit court, to be held as aforesaid, and that the said circuit court will to hear the said cause.

And that the said decree, and every part thereof, may be reversed and annulled, and held for nought, or such other decree there up made as to the said circuit court shall seem just; and that the said libellants be condemned to pay to this appellant his costs and damages in the premises, and otherwise, as to this court shall seem just.

And this appellant will ever pray, &c.

WOODRUFF & GOODMAN,
Proctors and counsel for appellant.

Circuit court, U. S., southern district of New York.

The Steamboat Neptune, her tackle, &c., Edward B. St. John, claimant and appellant,
vs.
Zebulon A. Paine and others, libellants and appellees.

Southern district of New York:

George C. Murray, student at law in the office of Woodruff and Goodman, proctors for appellants, being sworn, says, that on the twenty-first day of May last he served a copy of the petition of appeal filed in this cause on E. H. Owen, esq., the proctor for the libellants and appellees, by delivering the same to said Owen personally at his office.

GEORGE C. MURRAY.

Sworn before me, this 6th day of June, A. D. 1847.

GEO. W. MORTON, *U. S. Com'r.*

U. S. circuit court.

STEAMBOAT NEPTUNE, her tackle, &c., appellant,
vs.
ZEBULON A. PAINE, &c., libellant and appellant.

Affidavit service of petition of appeal.

WOODRUFF & GOODMAN, *Proctors.*

(Apostles filed June 7, 1847.)

U. S. circuit court.

ZEBULON A. PAINE, and others, libellants and appellees, ads.
The STEAMBOAT NEPTUNE, her tackle, &c., Edward B. St. John, claimants and appellants.

SIR: Please to enter the appearance of the appellees in the above entitled cause by me as their proctor.

New York, June 8th, 1847.

Yours, &c.,
E. H. OWEN, *Proctor for appellees.*

To ALEXANDER GARDINER, esq., *Clerk.*

At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on the eighth day of November, in the year of our Lord one thousand eight hundred and forty-seven; present, the honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

The STEAMBOAT NEPTUNE, her tackle, &c., Edward B. St. John, claimant and appellant,
vs.
ZEBULON A. PAINE and others, libellants and appellees.

This cause having been brought to a hearing upon the appeal from the decree of the district court of the United States, for the southern district of New York, in the second circuit, and also upon the pleadings and proofs in the cause; after hearing, Mr. F. B. Cutting on the part of the libellants and appellees, and Messrs. George Wood and L. B. Woodruff for the claimants and appellants, and mature deliberation having been had in the premises; on motion of E. H. Owen, proctor for the libellants and appellees, it is ordered, adjudged, and decreed, and this court, by virtue of the power and authority therein vested, doth order, adjudge, and decree, that the decree of the said district court herein be, and the same is hereby, in all things affirmed, with interest on the amount of said decree from the date thereof, and the costs of this court to be taxed.

And it is further ordered, that the stipulators for costs and value pay into the court below, and the obligors in the bond given on the appeal